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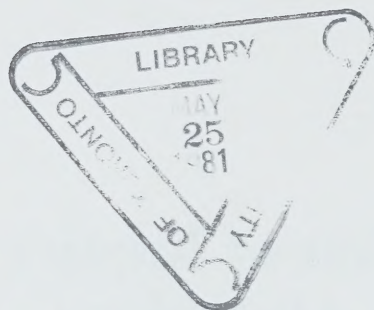
**Report of
The Commission of Inquiry
Into Certain Allegations
Concerning Commercial Practices of
The Canadian Dairy Commission**

The Commission of Inquiry Into Certain Allegations Concerning Commercial Practices of The Canadian Dairy Commission

Commissioner
The Honourable Mr. Justice Hugh F. Gibson

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Commission of Inquiry into
Certain Allegations Concerning
Commercial Practices of the
Canadian Dairy Commission



Commission d'enquête sur
certaines allégations
concernant des transactions de la
Commission canadienne du lait

Commissioner/ Commissaire
Honourable Mr. Justice Hugh F. Gibson

December 29, 1980.

TO HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL,

May it Please Your Excellency,

By Order in Council P.C. 1979-1586 dated
May 25, 1979, I was appointed the Commissioner
to inquire into and report upon certain allega-
tions concerning commercial practices of the
Canadian Dairy Commission. I have completed
the duties prescribed in the said Order in
Council and now submit my Report.

A handwritten signature in dark ink, appearing to read "Hugh F. Gibson". The signature is fluid and cursive, with a large initial "H" and "G".



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CHAPTER I

OVERVIEW OF THE INQUIRY

This Inquiry was established under the Inquiries Act, R.S.C. 1970, Chapter I-13, by Order-in-Council P.C. 1979-1586 on the 25th day of May 1979. The particular matter connected with the good government of Canada, and the conduct of the particular part of the public business of Canada, into which the Commission of Inquiry was directed to inquire concerned certain allegations made by Schafer Bros. Ltd. as enunciated by Michel Choquette with respect to dealings of the Canadian Dairy Commission, its officers and employees with Schafer Bros. Ltd. during the years 1966 to 1977, relating to the export from Canada of skim milk powder.

In general terms, the allegations and complaints of Schafer Bros. Ltd. and Michel Choquette are of two types. First, they are complaints or allegations that, beginning in January 1968, the Canadian Dairy Commission was not even-handed or fair in the administration of its policies concerning the sale of skim milk powder and with respect to the public funds it controlled and could make available in the form of subsidies to private traders; that it took over the market or business developed by Schafer Bros. Ltd. with the Mexican government purchasing agency known as CONASUPO, that in connection with such taking over it favoured certain private traders who competed with Schafer Bros. Ltd.; and that in the process certain Canadian Dairy Commission officials received kickbacks from such private traders. Second, they are complaints and allegations that the Canadian Dairy Commission, a Crown agency, misconceived its role in respect of export sales of skim milk powder. Different and broader policy questions not exclusive to Schafer Bros. Ltd. are raised in this second general group of complaints and allegations.

The Canadian Dairy Commission is a marketing board with powers extending to export marketing, a Crown corporation created by the *Canadian Dairy Commission Act*, R.S.C. 1970, Chapter C-7. The statutory objects of the Canadian Dairy Commission are to provide efficient producers of milk and cream with the opportunity of obtaining a fair return for their labour and investment and to provide consumers of dairy products with a continuous and adequate supply of dairy products of high quality.

CONASUPO (Compania Nacional de Subsistencias Populares) superseded an earlier Mexican purchasing agency known as CEIMSA in 1959. The

Mexican Government assumed complete control over it in 1965. CONASUPO is, and was, the sole and exclusive authority for importing skim milk powder into Mexico. In addition to skim milk powder, it buys a wide variety of agricultural products and owns and operates several small stores, particularly in the poorer areas of Mexico City. With respect to the skim milk powder it buys, part is processed through its reconstitution plant for sale in its stores and part is sold to certain public corporations for processing into evaporated milk and similar types of products for resale by those corporations in Mexico.

The dairy product that this Commission of Inquiry is concerned with is skim milk powder.

Schafer Bros. Ltd. is a small exporter and importer dealing mainly in agricultural products and has its head office in the City of Montreal. Commencing in 1968, and from time to time thereafter, David Schafer, its President, and George Schafer, his son, complained to federal government officials about certain policies and practices of the Canadian Dairy Commission. The complaints were of the type set out above and had to do, insofar as Schafer Bros. Ltd. is concerned, with the treatment, or perceived treatment, of it by the Canadian Dairy Commission, its officers and employees in connection with the export sale of Canadian skim milk powder to Mexico and to a lesser extent to other foreign markets.

Beginning about 1976, these complaints and allegations were consolidated into voluminous detailed written accounts by Michel Choquette for David Schafer. These detailed written accounts were prepared apparently for the purpose of persuading senior government officials to cause compensation to be paid to Schafer Bros. Ltd., essentially based on its claim that the Canadian Dairy Commission in 1971 took over the business of exporting and selling Canadian skim milk powder to CONASUPO, which business prior thereto Schafer Bros. Ltd. had developed and built up by the expenditure of much time and monies, and also on other matters. In respect to these other matters, these written accounts of complaints and allegations prepared by Michel Choquette otherwise generally painted a disturbing picture of the Canadian Dairy Commission, agent of the Government of Canada, in acting narrowly and vindictively with respect to Schafer Bros. Ltd. and its officers David Schafer and George Schafer, and generally in conducting its business without any proper regard for the broad objects and public interest with which it was charged by its enabling statute, and further that it conducted its affairs without any effective system of accountability.

The Order-in-Council P.C. 1979-1586 directed me to define the issues raised by the allegations, to determine all relevant facts, to ascertain whether or not the Canadian Dairy Commission, its officers and

employees during the period 1966 to 1977 have acted lawfully and fairly in their dealings with Schafer Bros. Ltd., and to report with respect to these matters. In addition, it was directed that the report include a recommendation as to whether or not any compensation should be paid to Schafer Bros. Ltd., and such other recommendations as I might deem appropriate.

In order to obtain a general understanding at this stage of the essence of the allegations made by Schafer Bros. Ltd. as enunciated by Michel Choquette, of which, as stated, the principal ones relate to the export sales or potential sales of Canadian skim milk powder to CONASUPO, it should be stated that the evidence disclosed that during the 1960's David Schafer made certain efforts as a private exporter to develop a demand in Mexico for Canadian skim milk powder. He did this by seeking to encourage certain officials in the purchasing agency, CONASUPO, to buy Canadian skim milk powder.

At the time that David Schafer was making his efforts as a private exporter to develop a demand in Mexico for Canadian skim milk powder, he did not know (in fact he did not know until evidence was given at this Inquiry) that other private Canadian traders at the same time, and even prior to the time David Schafer commenced to do so, were and had been interested and active, during the 1960's, in attempting to develop a Mexican market for Canadian skim milk powder.

David Schafer apparently envisaged that Schafer Bros. Ltd., if successful in making export sales to CONASUPO, would obtain supplies of skim milk powder from the stocks or inventory of the Canadian Dairy Commission, which purchased skim milk powder under a price support program.

By the latter half of the 1960's CONASUPO began to purchase significant quantities of skim milk powder in the export market. From that time to date the purchases have progressively increased, and in recent years have been quite substantial.

In 1968, the Canadian Dairy Commission sought, itself, to make a direct sale to CONASUPO of Canadian skim milk powder in competition with Canadian private exporters, including Schafer Bros. Ltd. In 1971, the Canadian Dairy Commission discontinued the export subsidy it had previously made available and paid to private exporters in connection with sales of Canadian skim milk powder to CONASUPO. Since 1971, the Canadian Dairy Commission has been the exclusive Canadian supplier of skim milk powder to CONASUPO.

In order to put these complaints or allegations in a proper context for analysis and determination, it was necessary for this Commission to examine certain general aspects of the policies and programs of the

Canadian Dairy Commission during the relevant years. In doing so, it was necessary to review the powers conferred upon the Canadian Dairy Commission pursuant to its enabling statute and to consider, in relation to the acts which are the subject of the complaints or allegations, whether or not the policies, practices and controls employed by the Canadian Dairy Commission were within or beyond the powers granted to the Canadian Dairy Commission, whether they were consistent with the objects of the Commission as prescribed by Section 8 of the *Canadian Dairy Commission Act*, whether they were necessary to achieve those objects, and whether the powers of the Commission were exercised within the framework of any general policy or criteria adopted to achieve the objects of the Canadian Dairy Commission as prescribed by Section 8. For example, an export subsidy perhaps would not have been necessary at all were it not for the large Canadian surpluses of skim milk powder which existed from time to time during the relevant years and which in turn resulted from the price support programs implemented by the Canadian Dairy Commission. Because of the price support program for skim milk powder, the Canadian Dairy Commission had purchased the surplus skim milk powder at a price above the international price.

A further reason for examining certain general aspects of the policies and programs of the Canadian Dairy Commission during these relevant years so as to put the complaints or allegations in a proper context, was to avoid the risk that actions or policies of the Canadian Dairy Commission might be unfairly criticized if they were examined outside the perimeter of the statutory objects and purposes of the Canadian Dairy Commission. This is especially important because certain public policies require flexibility in their administration in order that they might be made effective.

Section 8 of the *Canadian Dairy Commission Act* defines the objects of the Canadian Dairy Commission as follows:

"8. The objects of the Commission are to provide efficient producers of milk and cream with the opportunity of obtaining a fair return for their labour and investment and to provide consumers of dairy products with a continuous and adequate supply of dairy products of high quality."

Section 9 sets out the powers of the Canadian Dairy Commission. "Subject to and in accordance with any regulations made under this Act", the Canadian Dairy Commission is, *inter alia* authorized to purchase any dairy product, to export or sell or otherwise dispose of any dairy product purchased by it, to make payments for the benefit of producers of milk and cream for the purpose of stabilizing the price of those products, and to do "all such acts and things as are

necessary or incidental to the exercise of any of its powers or the carrying out of any of its functions under this Act.”

Section 11 requires the Commission to comply with any directions from time to time given to it by the Governor in Council or the Minister of Agriculture, but there have been no such directions.

Section 12 authorizes the Governor in Council to make regulations pertaining to various subjects, but there have been no relevant regulations.

In order to assess the relevant implications of Sections 8 and 9 of the *Canadian Dairy Commission Act*, evidence was sought and received from expert economists, from disinterested persons with long and thorough experience in the dairy industry in Canada, and from several officials past and present of the Canadian Dairy Commission. As to the latter, evidence was given by the three persons who have at various times been Chairman of the Canadian Dairy Commission at various times since its creation to the present time, namely, S.C. Barry (1966-1973), E.J. Powers (1973-1976) and G. Choquette (1976 to the present). Three other persons who have served as members of the Commission also testified, namely, H.M. Johnson (1973-1979), E.G. Hodgins, (1977 to date), and J. Thibaudeau (1967-1976), as well as did other marketing and policy personnel of the Canadian Dairy Commission.

Each particular allegation of fact made by Schafer Bros. Ltd. and enunciated by Michel Choquette was

examined carefully. David Schafer, George Schafer and Michel Choquette were the first witnesses regarding the facts in issue and they gave extensive evidence of what was being alleged. They also stated their interpretations of what the documentary evidence meant to them. They were cross-examined by various counsel, including counsel for the Canadian Dairy Commission. Certain officials of the Canadian Dairy Commission also gave evidence, stated their interpretations of the documentary evidence and were in like manner cross-examined by various counsel. Certain personnel of other private traders also gave evidence and they, in turn, stated their interpretations of the documentary evidence and also in like manner were cross-examined by various counsel.

All documentary evidence that was thought to be relevant in any way to the allegations was made part of the evidence of this Inquiry.

In addition, a number of officials of CONASUPO and of private traders or agents in Mexico were interviewed in Mexico-City in the presence of Michel Choquette and counsel for a number of the parties, all such parties and their counsel having been invited to be present.

All the evidence, both oral and documentary, was adduced in public at all times and a transcript of the oral testimony and copies of the documentary evidence were made available for public inspection at the Commission of Inquiry offices during all business hours.

CHAPTER II

NATURE AND CONDUCT OF THE INQUIRY

(A) ORDER-IN-COUNCIL

By Order-in-Council P.C.1979-1586, dated the 25th day of May 1979, the Honourable Mr. Justice Hugh F. Gibson was appointed a Commissioner, pursuant to the provisions of Part I of the Inquiries Act, Chapter I-13 of the Revised Statutes of Canada 1970, and was directed to inquire into certain allegations made by Schafer Bros. Ltd. as enunciated by Mr. Michel Choquette in respect of dealings of the Canadian Dairy Commission, its officers and employees with Schafer Bros. Ltd. of Montreal, Quebec, during the years 1966 to 1977, relating to the export from Canada of skim milk powder.

The Order-in-Council specifically directed that the issues raised by the said allegations be defined, that all facts relevant to the said issues and allegations be determined, and that it be ascertained whether the Canadian Dairy Commission, its officers and employees have acted "lawfully and fairly" in their dealings with Schafer Bros. Ltd.

The Order-in-Council directed that the report on these matters include a recommendation as to whether any compensation should be paid to Schafer Bros. Ltd. and, if so, the basis on which such compensation should be determined. It also invited such other recommendations as the Commissioner might deem appropriate.

The Order-in-Council is reproduced in full in Appendix 1 to this Report.

(B) GENERAL NATURE AND ESSENCE OF THE ALLEGATIONS AND OF THE ISSUES RAISED

The allegations are contained in voluminous written submissions made by Michel Choquette for David Schafer and to a lesser extent George Schafer to various Government of Canada officers and officials during 1976, 1977, and 1978. The role of Michel Choquette is discussed in part (E)3 of this Chapter, below.

The substance of the main allegations may be summarized as follows:

1. Schafer Bros. Ltd. alleged it had expended much time and money since the late 1950's attempting to develop an export market in Mexico for surplus Canadian skim milk powder. Regular trips

were made by David Schafer to Mexico, personal contacts were established with officials of CONASUPO, Mexican government officials were made aware of the merits of Canadian skim milk powder, and knowledge was gained about Mexican requirements and purchasing specifications. All this was done with the knowledge and approval of senior officials of the Agricultural Stabilization Board and, since the establishment of the Canadian Dairy Commission in 1966, with the same general encouragement of senior officials of the Canadian Dairy Commission. David Schafer says that he was led to understand by those government officials that in the event that Mexican demand for surplus Canadian skim milk powder materialized, he could count on the cooperation of the Agricultural Stabilization Board or the Canadian Dairy Commission, as the case may be.

2. In January, 1968, when the first major possibility arose that Schafer Bros. Ltd. might sell skim milk powder to Mexico, not only did the Canadian Dairy Commission refuse supplies to Schafer Bros. Ltd. but it bid to CONASUPO directly. David Schafer was advised of this at a meeting with the Canadian Dairy Commission on January 24, 1968, and from that date forward things seemed to go downhill, at least so far as David Schafer's trust in the officials of the Canadian Dairy Commission was concerned. For reasons that are more fully explained below in the Report, David Schafer felt that the Mexican market for surplus Canadian skim milk powder properly belonged to him in a proprietary way, and that he had been betrayed by a Canadian government agency that was acting beyond its proper scope and function.
3. David Schafer and his son, George Schafer, the owners and senior officers of Schafer Bros. Ltd., felt that on various occasions between 1968 and 1971 the senior officials of the Canadian Dairy Commission deliberately discriminated against Schafer Bros. Ltd. and gave favoured treatment to particular competitors of Schafer Bros. Ltd. The primary individual target for criticism by Schafer Bros. Ltd. was Dr. S.C. Barry, who was Chairman of the Canadian Dairy Commission during this period, although virtually every Canadian Dairy Commission official who had anything to do with Schafer Bros. Ltd. also came under attack. The principal incidents of alleged discrimination had to do (i) with the sale by the Canadian Dairy Commission of ageing skim milk powder at a very low price to another exporter in August 1968 for resale outside the western hemisphere; (ii) with misleading information and inflexible financial conditions in connection with a 770 ton sale in January 1969 (which was the

first-and only-sale that Schafer Bros. Ltd. actually made to CONASUPO) which made performance of the contract more difficult and expensive than it should have been; (iii) with misrepresenting a key fact to David Schafer in March 1969 with the result that Schafer Bros. Ltd. lost out to one of its Canadian competitors on a large contract with CONASUPO at that time, and (iv) with providing confidential bidding information to competitors of Schafer Bros. Ltd. in 1969 and 1970.

4. In 1971 the Canadian Dairy Commission discontinued the payment of export subsidies to private exporters in connection with the sale of Canadian skim milk powder to CONASUPO, which was becoming Canada's single largest foreign customer for skim milk powder. This was the alleged explanation of the fact that all the CONASUPO business was thereafter handled directly by the Canadian Dairy Commission.
5. In 1976, at a time when Canadian Government surpluses of skim milk powder were abnormally large, Schafer Bros. Ltd. lost out in a bidding contest with suppliers from other countries to supply very substantial amounts of skim milk powder to the Philippines over a period of three years. Schafer Bros. Ltd. says that the Canadian Dairy Commission should have given better technical support in connection with that bidding contest, and that the Canadian Dairy Commission was not sufficiently aggressive in assisting private exporters.
6. In 1977 the Canadian Dairy Commission decided to appoint a Canadian exporter to act as its agent in connection with its sales to CONASUPO, and it appointed someone other than Schafer Bros. Ltd.

Other allegations are also made but they are of a much more minor nature. The statement of allegations is reproduced in full as Appendix 5 to this Report.

In addition also, Schafer Bros. Ltd. and Michel Choquette make certain allegations indirectly in the form of innuendo. It may be that the intent of these allegations was to convey the impression that allegations were being made when in form perhaps they were not; but the result of the form in which the statements were made was to convey the impression to third parties that there were illegal kick-backs from certain private traders in Canadian skim milk powder to officials of the Canadian Dairy Commission in return for favoured treatment afforded those private traders by Canadian Dairy Commission officials. An example of the form of these allegations is as follows:

"In addition, if it were to be proven that certain officials of the Canadian Dairy Commission received illegal "kickbacks" for their preferential treatment of Messrs. Gonzalez and Chisholm, or even extended favoured treatment to these traders without receiving supplementary remuneration, then this secretive transfer of the Mexican market for Canadian skim milk powder to these favoured individuals would surely constitute legal grounds for prosecution. "Furthermore, if, in spite of the Canadian Dairy Commission's "official" statements that by 1971 it had monopolized the Mexican market for skim milk powder and that consequently it was no longer giving export subsidies to private traders for sales of this commodity to Mexico, it could be shown that the same favoured Canadian exporters or any other traders received subsidies for sales to CONASUPO which the Dairy Commission refused to extend to Schafer Bros., it is probable that a court of law would find the past senior officials of the Commission guilty of fraud." (Exhibit 6, Vol. VI, p. 175)

In short, the gist of the allegations of Schafer Bros. Ltd. and Michel Choquette against the Canadian Dairy Commission, its officers and its employees, is that the Canadian Dairy Commission abused its powers over large stocks of skim milk powder and abused its power to determine the existence and amount of export subsidy by acting in a manner that was sometimes discriminatory against Schafer Bros. Ltd., that was unfair in view of the investment of time and money expended by Schafer Bros. Ltd. in developing the Mexican market for surplus Canadian skim milk powder, that may sometimes have been criminal, and that may sometimes have been outside the statutory powers of the Canadian Dairy Commission.

In addition, it is in substance alleged that the Canadian Dairy Commission during the subject period, 1966-77, did not competently and adequately discharge its statutory responsibilities. It is alleged that some of the general policies and practices of the Canadian Dairy Commission were shortsighted, of insufficient assistance to the private sector, and sometimes even harmful to the private sector. David Schafer and George Schafer both felt that the Canadian Dairy Commission was not working hard enough at what it should be doing, namely, helping the private sector to get rid of Canada's surplus skim milk powder, and that it was doing far too much in the nature of direct export sales itself.

Schafer Bros. Ltd. says that as a result of the acts of the Canadian Dairy Commission, which are alleged to be unlawful and unfair, Schafer Bros. Ltd.

has suffered a substantial loss of investment and profits for which it should be compensated.

David Schafer says that he chose not to sue in the courts, but instead chose to appeal to the Government on a "moral" basis. One result of his avoiding the courts was that until this Inquiry took place there was no proper forum for accomplishing an organized and complete disclosure of all relevant documents and information in such a way that the principal antagonists could properly confront each other.

(C) PRIOR INVESTIGATIONS OF THE ALLEGATIONS

Beginning in late 1974 a series of assessments of one form or another were made of the allegations and claims of Schafer Bros. Ltd. by various persons in government. The Minister of Agriculture and the Privy Council Office both obtained assessments or opinions on aspects of the matter from members of their departmental staffs.

These assessments and opinions did not satisfy Schafer Bros. Ltd., Michel Choquette, or the Honourable Warren Allmand, who continued to press for a more comprehensive and independent investigation. In late 1977 or early 1978, the Department of Justice was asked to investigate and report on all aspects of the matter. It reported in writing in 1978.

By letter dated September 19, 1978, addressed to the Prime Minister, Michel Choquette was highly critical of the Department of Justice investigation and report. Excerpts from his lengthy letter, which was marked as Exhibit 6, Volume IX (G) in this Inquiry, are as follows:

"Although it is identified on its title page as an 'Inquiry', the report prepared by Mr. J.S. Milligan and signed by Mr. Hayim Calof could much more properly be called an outright defense of the Dairy Commission's position. Mr. Milligan often seems to be acting more as an attorney for Mr. Barry and the Dairy Commission than as an objective investigator. Certainly it is difficult to believe, in reading the report, that matters were approached openly and without bias by Mr. Milligan.

"Furthermore, the report contains serious errors of fact and orientation, and totally ignores many key questions raised in my formal presentation.

"What the Department of Justice has produced is, in my opinion, no more than a gilded, updated edition of the old Dairy Commission story, with all the contradictions and feeble arguments preserved. It is an insult to the intelligence of all of us who, for

several years now, have been asking for a truly objective and independent investigation...

"It is extremely disturbing to learn from the list provided at the back of the Justice Department's report that of 18 persons interviewed by Mr. Milligan, 14 have a direct connection with the Dairy Commission or with its predecessor, the Agricultural Stabilization Board, or with the Department of Agriculture. The only person openly critical of the Dairy Commission who was interviewed is myself. And it should be noted that I was contacted by Mr. Milligan only after I had written to Mr. Calof to point out that I had not been contacted.

"Moreover, although Mr. Milligan told me when we first spoke that he would be coming to Montreal to spend as much time as would be necessary to go over everything with me in detail, he later chose, for reasons better known to himself, not to pursue his discussions with me beyond one or two preliminary meetings in Ottawa. At these meetings, matters relating to Mexico were barely touched upon. I was consulted almost exclusively about a potential milk powder sale to the Philippines, which is only a small side issue in the Schafer Bros. case, and one upon which my written presentations had already made it quite clear no moral or legal claim is based.

"Not only does the report concentrate very heavily on information obtained from individuals with an interest in the Canadian Dairy Commission; it also invariably takes these individuals at their word without the slightest trace of skepticism...

"More than anything else, it is the general attitude which I feel must change if this whole matter is ever to see the light of day. Until now the tendency in Ottawa has been to treat the Schafer case as an attack at the civil service rather than as an opportunity to right a possible wrong.

"It seems clear to me that what is required now more than ever is a truly objective third party prepared to approach this unusual case with an open mind and to probe as deeply as necessary.

"I believe that the terms of reference may have to be wider than those which were set out as guidelines for Mr. Milligan to follow, and that the investigator's mandate should make it easier for him to obtain documents from the private sector and should enable him to question witnesses with the advantage

of being able to inform them that whatever they say will officially go on record.

"What I am suggesting, of course, is an investigation set up under the *Inquiries Act*.

"However, at the same time as the questions of civil, administrative and possibly criminal liability are being looked into, the commissioner or commissioners should be asked quite specifically to consider the moral side of the case as well, since this has never really been given proper attention."

None of the reports of the previous assessments or investigations were made part of the record of this Inquiry and I did not refer to them in any way. This Inquiry was an inquiry *de novo*.

(D) METHOD OF CONDUCTING THE INQUIRY

A Commission appointed under the *Inquiries Act* has a duty to investigate and search out the facts and to avail itself of all reasonable or apparent sources of information, giving a wide scope to the inquiry, in order to report fully on the facts. It is not a trial, and there is no prescribed practice or procedure that must be followed; a Commissioner is free, indeed duty-bound, to obtain all reliable information by whatever means appear to be necessary or appropriate. The principal requirement is that the inquiry, and the report, be honest, fair and impartial.

The Inquiry provides a forum in which any member of the public may give any information concerning the subject matter of the inquiry. As a consequence it is essential that the inquiry be conducted in public as far as possible, with all interested persons having the opportunity to present evidence and with others having the opportunity to confront them with questions or to present conflicting or differing evidence.

It was important to conduct the entirety of this particular inquiry openly and in public, and this was done from beginning to end. There were no *in camera* sessions to take evidence, no private telephone calls and no communications conveying relevant subject matter that were not marked as exhibits or otherwise communicated to all interested persons. Where inquiries by Commission staff turned up relevant information, that information was made available to all interested persons in such a manner that it could be openly challenged and assessed.

All of the oral evidence, except for the interviews held in Mexico, was given under oath at public hearings, with transcripts taken. In order to assist all interested persons and to obtain as much reliable evidence as possible, without any impairment of anyone's opportunity to present his case in full, most of the voluminous documentary evidence filed in an

organized, chronological way at the commencement of the public hearings, and, near the end of the inquiry, certain unsworn interviews were held in Mexico in the presence of counsel or representatives of all interested persons who wished to attend. These latter procedures are appropriate in public inquiries so long as basic public interests of openness and fairness are observed (see, for example, *Re the Ontario Crime Commission, Ex parte Feeley and McDermott*, [1962] O.R. 872 (C.A.); *R. v. Deputy Industrial Injuries Commissioner, Ex parte Moore*, [1965] 1 Q.B. 456 (C.A.); and *Selvarajan v. Race Relations Board*, [1976] 1 All E.R. 12 (C.A.).) These cases review the principles prescribing that a Commissioner under the *Inquiries Act* is entitled, and obliged, to adopt the most effective and expeditious procedures consistent with fairness and reliability.

The Order-in-Council establishing this Commission of Inquiry specifically authorized the Commissioner "to adopt such procedures and methods as he may from time to time deem expedient for the proper conduct of his duties".

One of the first steps was to formulate and make available to the public the *Rules of Practice and Procedure* that would be followed. These Rules, reproduced as Appendix 4 to this Report, were prepared in order to facilitate an organized presentation of all evidence in a manner that would minimize the risk of surprise at public hearings, that would enable everyone to decide in advance whether he wished to be in attendance when certain evidence was given, and that would facilitate advance preparation of questions to be directed to the witnesses giving such evidence. The key requirement was that detailed written evidence statements be filed sufficiently in advance of the hearing where the evidence was to be given in order to meet these objectives. The *Rules of Practice and Procedure* also notified all interested persons and members of the public of the way the inquiry would be conducted, where documents could be inspected and information obtained, and so on.

The existence of the *Rules of Practice and Procedure*, the general nature of the Inquiry, and the date of the public Organizational Hearing were communicated widely to the Canadian public across Canada by means of a Public Notice (see Appendix 2) published in newspapers, broadcast by radio, and sent to a large number of industry organizations, governmental bodies, universities, and individuals who were thought to have a possible interest in one or more aspects of the inquiry. Anyone who wished to receive notices of the specific dates of subsequent hearings was invited to advise the Registrar of that wish, a special mailing list was maintained for that purpose, and advance notices of all hearings held throughout the inquiry were given to all persons who indicated a wish to be so advised. (See Appendix 7)

Since the Order-in-Council had directed the Commissioner to inquire into the allegations made by Schafer Bros. Ltd. and Michel Choquette, it was essential at an early stage to study the voluminous writings of Michel Choquette and the documents he referred to (Exhibit 6, vols. I to IX — over 2300 pages in total), in order to distill the precise allegations and to define the issues so as to provide a framework which would ensure a thorough and efficient inquiry, while giving full opportunity to all interested persons to submit any relevant evidence.

On the basis of this documentation Commission counsel prepared a suggested statement of the allegations, together with a further document setting out their suggested definition of the issues raised by such allegations. These two documents were deposited for public inspection at the Commission's offices and were filed at the public Organizational Hearing which was held on November 23, 1979 at Ottawa.

In addition, formal requests were made, directed to a number of other possible sources of documents, including individuals, private corporations, government agencies and departments, to produce such relevant documents as they had in their possession or control. Such additional documents, when received, were studied in light of the allegations and issues. Such documents as were deemed relevant or possibly relevant by Commission counsel, including certain classified government documents for which declassification was sought and obtained, were bound in six volumes and were also filed at the Organizational Hearing (Exhibit 12, Vols. 1 to 6 — 1211 pages). Approximately 600 pages of further relevant documents were filed as exhibits by Commission counsel after the commencement of public hearings as other documents came into the possession of the Commission of Inquiry.

Finally, certain Commission advisors, as requested by me, prepared and filed extensive statements and expert opinions describing the operations of the Canadian Dairy Commission during the years 1966 to 1977 relating to the export from Canada of skim milk powder; and providing an outline of the economic aspects of the inquiry.

After hearing all representations from counsel for all interested parties and those others who wished to make representations, I determined what the allegations were and defined the issues raised by the said allegations; and I then pronounced a statement of the allegations and of the issues raised by the allegations in accordance with Rule V(3) of the *Rules of Practice and Procedure*. The *Statement of Allegations* and the *Issues raised by the Allegations* as so settled appear as Appendices 5 and 6 to this Report.

Evidence statements were filed by witnesses, and the Registrar of the Commission of Inquiry having

duly notified the interested parties prior to each hearing, I as Commissioner held public hearings in Montreal, Hull and Ottawa on the following dates: December 4,5,6 & 7, 1979; January 14,15,16,17 & 18, 1980; February 4,5,6,7,8,14 & 15, 1980; March 10,11,12,13 & 14, 1980; May 28, 29 & 30, 1980; June 25, 1980; and July 2, 1980 (for details, see Appendices 8 and 9.)

The evidence of David Schafer, George Schafer and Michel Choquette was heard first, and in Montreal where they reside. Many other witnesses were heard and cross-examined by counsel for all parties who wished to do so. Many documents were filed, either by witnesses or by Commission counsel, and were made available for public inspection at the Commission's offices.

Counsel for interested parties submitted written arguments on different occasions regarding the allegations and the issues based on the evidence presented to me.

(E) GENERAL COMMENTS ON THE EVIDENCE

1. David Schafer

David Schafer was about 82 years of age at the time the hearings commenced. Because of this fact, and because he was the principal complainant, he was the first witness to be heard regarding the allegations of fact. Previous investigations had apparently not heard any evidence from him directly. Because of his age, he was unable to testify for any long period in any day. His memory of events was not as clear as it probably was some years ago. His suspicion of the Canadian Dairy Commission and its officers and officials was evident in his testimony. Many of the answers he gave in response to questions on cross-examination by various counsel were not really responsive to the questions. The reason for this was a combination of the adverse effects of his age on his memory, and his suspicion of the Canadian Dairy Commission and its officers and employees.

As a consequence, in the determinations made in this report account is taken of these frailties and any consequent deficiencies in his evidence so as to not in any way detract from the position he was submitting in respect to the allegations and issues of this inquiry.

2. George Schafer

George Schafer, son of David Schafer, was the other officer of Schafer Bros. Ltd., during the years 1966 to 1977. He was 42 years of age at the time of the commencement of the hearings. He is not and never was the businessman that his father was. He has an unfortunate manner which manifests itself in the irritation of most persons with whom he deals, and especially any Government officials. His conduct

and attitude towards such officials, on many occasions, cannot be categorized other than as abusive.

He is not well, suffering from diabetes. He was not truthful on certain minor collateral matters having nothing to do with the subject of this Inquiry. He did not demonstrate any substantial or outstanding knowledge of the milk industry, unlike many of the other private traders such as the Bishops of Eastern Townships Produce Ltd., Mr. Pariseault of the Granby Co-op and currently with la Coopérative Fédérée du Québec, Messrs. T.A. Chisholm and W.I. Pelley of Ronald A. Chisholm Ltd. and Mr. Samuel Ault.

George Schafer has certain beliefs, and certain views arising out of them, which he expressed in correspondence and orally which are irrelevant to the subject matter of the Inquiry but, because he expressed them, did not assist in giving credence to the complaints and allegations of Schafer Bros. Ltd.

3. *Michel Choquette*

Michel Choquette is a 42-year old writer, entertainer and filmmaker from Montreal. He is no relation to Gilles Choquette, who has been the Chairman of the Canadian Dairy Commission since 1976.

Michel Choquette was the author of the documents which form the basis of the statements of the allegations and issues. He is an articulate, intense person. He obviously believes in the worthiness of the cause of David Schafer. He conceived his function as being to enunciate, and he did enunciate, the beliefs and position of David Schafer. His sources of information in the main were David Schafer and, to a lesser extent, George Schafer, his interpretation of certain documents, (all of which documents are before the Commission of Inquiry) and certain conversations he had with Gilles Choquette when the latter was Executive Assistant to the then Minister of Agriculture. He had no personal interest in the cause he espoused. Instead, what he did was marshal the facts for David Schafer.

In early 1974, Michel Choquette was told by a mutual friend of his and the Schafers of the difficulties that Schafer Bros. Ltd. believed it was having with the Canadian Dairy Commission. This mutual friend knew that Michel Choquette had a strong general interest in the control and supervision of discretionary power exercised by government bureaucracy. Michel Choquette was introduced to David Schafer and George Schafer, heard their side of the story, and reviewed various documents shown to him by the Schafers. He apparently concluded that there were important issues involved and that Schafer Bros. Ltd. probably had a legitimate complaint. He was also upset by what appeared to him to be the inability of Schafer Bros. Ltd. to secure, through

three successive Ministers of Agriculture (Messrs. Greene, Olson, and Whelan), a fair and independent assessment of its complaints. It seemed to him that the Ministers of Agriculture relied to too great an extent on the senior officials of the Canadian Dairy Commission itself to make their assessments of the facts.

Michel Choquette then made a substantial personal commitment to the complicated and arduous work he felt was necessary to obtain a satisfactory hearing of the entire matter. He set about to preparing comprehensive and detailed chronological accounts of the facts as he understood them from the Schafers and reviewed such documents as the Schafers possessed. He also made certain inquiries in Mexico and of the Canadian Dairy Commission, and had conversations with Gilles Choquette when the latter was Executive Assistant to the Minister of Agriculture and, later, Chairman of the Canadian Dairy Commission. It turned out to be his principal occupation for four years, all of which work he performed voluntarily without remuneration and on a disbursements-only basis. He produced a much more coherent account of the facts than the Schafers could have done by themselves. It appears that without his efforts this Commission of Inquiry would not have been established.

Michel Choquette was also present at many of the public hearings of the Commission of Inquiry, testified himself before the Commission of Inquiry, and was present during the interviews held in Mexico City in October, 1980.

The voluminous documentation prepared and assembled by Michel Choquette between 1974 and 1977 was the raw material on which the *Statement of Allegations*, which formed the basic subject matter of the Inquiry, was based. That documentation, all of which was marked as Exhibits 6 and 6A in this Inquiry, is listed in Appendix 10 to this Report. Michel Choquette's evidence statement, which in essence sets out the nature and evolution of the documentation, is reproduced as Appendix 16 to this Report.

For most purposes the key document prepared by Michel Choquette is a 182-page letter or report dated July 25, 1977, which he wrote to Gilles Choquette, "definitively stating Schafer Bros.' case", as he put it in his evidence. In evidence he stated that "it is all in here anything that is relevant". This long letter had, as Appendix I to it, a 120-page "condensed version" of a longer 323-page chronological account of the facts he had prepared, as well as copies of what he considered to be the key documents which were attached as Appendices 2 to 78. He subsequently prepared a memorandum dated August 15, 1977 by way of an addendum to the document dated July 25, 1977.

Copies of all these documents were submitted to various government officials.

It is worth noting that in the preparation of all this documentation, and apart from a minor first-hand involvement in the Philippines incident, Michel Choquette only really had access to the Schafers' side of the matter. He did not contact other private Canadian exporters. The Canadian Dairy Commission did not appear to be cooperative in answering questions he submitted to it seeking information. Perhaps this is understandable, but it did lead to a situation where he became an advocate for the Schafer understanding and interpretation of the facts, based largely on circumstantial evidence and on the suspicions of the Schafers. It also led to his raising questions in a manner certain to cause anguish (and hostility) on the part of the Canadian Dairy Commission officials and others. For example, at page 6 of his memorandum of August 15, 1977, referred to above, he stated:

"What we are dealing with is not a question of agency, but of unfair competition, unjust enrichment, inducement, quasi contract, misuse of delegated administrative power, etc. We may also be dealing with fraud, discrimination and the transferring of business to favoured individuals."

(As was the case with David Schafer and George Schafer, the testimony and documents given and filed before this Commission of Inquiry must certainly have added to the prior knowledge and understanding Michel Choquette had of the subject matter of the Inquiry.)

4. *Canadian Dairy Commission*

All past and present officials of the Canadian Dairy Commission who appeared at any time to have had any contact with or possible responsibility for any of the facts alleged by Schafer Bros. Ltd., excepting Mr. D.B. Goodwillie who is deceased, were called to testify by either counsel for the Canadian Dairy Commission or counsel to the Commission of Inquiry, and were made available for cross-examination. These persons included: Dr. S.C. Barry (Chairman, 1966-1973); Mr. E.J. Powers (Chairman, 1973-1976); Mr. Gilles Choquette (Chairman, 1976 to present); Mr. H.M. Johnson (Member, 1973-1979); Mr. E.G. Hodgins (Member, 1977 to present); and Mr. J. Thibaudeau (Member, 1967-1976).

Other marketing and policy personnel of the Canadian Dairy Commission who testified were Mr. Richard Tudor Price, Mr. L.J. Marcellus, Mr. J.R. Sherk and Mr. Raymond Cloutier. They testified not only regarding the operations of the Canadian Dairy Commission, but also with respect to the particular allegations and issues which were the subject matter of this Inquiry.

Commission counsel, on various occasions, requested and obtained from the Canadian Dairy Commission documents which were relevant to the Inquiry.

5. *Private Canadian Traders*

During the course of the Inquiry certain Canadian private traders gave evidence and expressed their views regarding the operations of the Canadian Dairy Commission, of skim milk powder markets and of the export trade business. The testimony of these traders was particularly valuable to me in view of their extensive experience as traders of dairy products including skim milk powder.

Mr. Timothy A. Chisholm and Mr. Walter I. Pelley, both of Ronald A. Chisholm Ltd., appeared as witnesses. Mr. Chisholm is the President of Ronald A. Chisholm Ltd. and has been employed by the company since 1957, while Mr. Pelley is its Vice-President and has also been in its employ since 1957.

Ronald A. Chisholm was founded in 1938 and is an international commodity merchant trading in food and industrial commodities domestically and internationally. On average, Ronald A. Chisholm Ltd. currently trades 3 million (and up to 4 million) pounds of agricultural products daily, and was involved in large sales of skim milk powder to CONASUPO in 1969-1970, after it had made a sale of skim milk powder to CONASUPO in 1968.

Ronald A. Chisholm Ltd. had a special interest in the Inquiry as a result of allegations by Schafer Bros. Ltd. that it had engaged in "irregular behaviour" in connection with its sales to CONASUPO in 1969 and 1970.

Mr. D. Curtis Bishop and Mr. Ronald B. Bishop also gave evidence before this Inquiry. Both are officers, directors and shareholders of Eastern Townships Produce Ltd. (hereinafter referred to as ETP), which was founded in 1941. They stated in their joint evidence statement:

"That ETP by December 31, 1945, was already engaged in the export and domestic distribution of milk powder.

"That from 1949 to the present, the export and domestic distribution of manufactured milk products (principally skim milk powder) has been the major area of business activity of ETP.

"That an officer of ETP has at one time or another personally visited almost every country in the world which has imported Canadian milk powder. The only business purpose of these visits was to sell manufactured milk products.

"Dean R. Bishop, our father and President of ETP, first visited Mexico in 1952. By about 1953 we were making sales and shipping Canadian Milk Powder to Mexico.

"Dean R. Bishop first visited Cuba in 1954. No sales of milk powder were concluded at that time. Between 1954 and 1961, ETP purchased surplus Cuban milk powder which was shipped to Venezuela and Canada.

"Dean R. Bishop first visited the Philippines in about 1965. ETP had already sold to this market prior to his visit.

"Subsequent visits were made to Mexico and the Philippines on several occasions and to Cuba on at least 2 occasions.

"ETP has made sales of Canadian manufactured milk products to: Argentina, Aruba, Bahamas, Belgium, Brazil, British Honduras, Canal Zone, Chile, Colombia, Cuba, Curacao, Denmark, Dominican Republic, Greece, Grenada, Guatemala, British Guiana, Holland, Honduras, Hong Kong, India, Iran, Iraq, Israel, Italy, Jamaica, Japan, Korea, Lebanon, Madagascar, Malaysia, Mexico, Nicaragua, Nigeria, Pakistan, Panama, Peru, Philippines, Rhodesia, St. Lucia, St. Vincent, El Salvador, Singapore, Spain, Sweden, Taiwan, Thailand, Trinidad, Union of South Africa, U.S.A., Venezuela.

"In several of the above countries, ETP was (and is) represented by an appointed agent. "In Mexico, from 1961 to the present, ETP's agent has been Walter E. McAllister, Rio Lerma 339-2, Mexico 5, D.F. As ETP agent, Mr. McAllister maintained regular contact with private businesses, CEIMSA, and subsequently CONASUPO.

"Between 1961 and 1966 Dean R. Bishop personally visited CONASUPO in Mexico and met with Hector Rodriguez Licea, the purchasing manager of CONASUPO. Mr. McAllister and his wife were also present at this meeting. Dean R. Bishop has also met personally with Hank Gonzalez, former General Manager of CONASUPO.

"ETP has always maintained a close liaison with officials of the Agricultural Stabilization Board and Canadian Dairy Commission, providing them on a regular basis with information pertaining to any world market.

"In August 1968 ETP contracted with the Canadian Dairy Commission to purchase approximately 35,000 metric tons of Canada First Grade Spray Process Skim Milk Powder, 1967/1968 production...

"In 1970, ETP sold Canadian skim milk powder to CONASUPO."

Mr. Philippe Pariseault, Director of the milk industry division of La Coopérative Fédérée du Québec, gave evidence and stated that:

"From 1941 to 1955, I was employed by Laurentide Dairy Products Corp., first as a technical director and subsequently as its director and general manager;

"From 1955 to 1976, I worked as general director of Cooperative Agricole de Granby;

"From 1966 until now, I have also acted as director of the Dairy division of La Coopérative Fédérée du Québec;

"During that period, namely from 1968 to 1978, I was also the President and General Manager of Québec-Lait;

"More than 8,000 farmers are members of La Coopérative Agricole de Granby and we are producing more than 40% of all the milk of the province of Quebec;

"The Coopérative Agricole de Granby, by 1940, was already engaged in the processing and in the export and domestic distribution of manufactured milk products including skim milk powder;

"From 1950 to the present, the processing, the export and domestic distribution of manufactured milk products including skim milk powder, have been the major area of business activity of our society;

"In fact, from 1955 to 1960, I visited Mexico and most of the importing foreign countries, in order to sell manufactured milk products, principally skim milk powder;

"After 1960, Mr. F. Brunet, our director of export-marketing, visited Mexico regularly to maintain regular contact with our agents, private businesses, CEIMSA and subsequently CONASUPO;

"Before the Cuban revolution in 1959, we visited Cuba in order to sell them skim milk powder;

"We also visited this country after 1959 and we have made sales of skim milk powder to them;

"Our Coop has made sales of Canadian manufactured milk products including skim milk powder to about 40 countries of which Mexico [sic];

"From 1950 to 1953, our agent in Mexico was Rafmex S.A., from 1954 to 1967 our

agent was Wygard Alex, A.A.B. Centro, and from 1967 to the present, our agent was and still is Sr. Alberto Benelol, Lopez 82-18, Mexico, D.F.;

"Our agents had our instructions to maintain regular contacts with the proper authorities;...

"From 1950 to 1953, we sold regularly skim milk powder to Mexico; in fact we were controlling at the time 70% of the private Mexican market;

"From 1953 to 1971, we sold skim milk powder to Mexico and more particularly we sold 3 million pounds — of skim milk powder in 1965 to CONASUPO."

Mr. Samuel G.K. Ault, former President of Ault Foods (1975) Ltd. which had a special interest in the Inquiry by virtue of two of the allegations, also gave evidence and stated:

"The Ault Company has been in existence in Dundas County in the Province of Ontario producing dairy products of all kinds since 1891.

"The company was initially incorporated as Ault Creamery Ltd. As our operation diversified, new companies were incorporated such as Ault Milk Products Ltd. and Ault Cheese Company Ltd. In 1975, Ault Foods (1975) Ltd. was incorporated federally and the majority of dealings take place under the name of Ault Foods Ltd. presently. "In 1939, I entered the employment of the Ault Company, and between 1946 and 1960 held the position of General Manager. In 1960, my brother, Ken Ault, retired as President and I was President from 1960 until 1978 and am currently Chairman and Chief Executive Officer.

"Until 1950, the Ault Company was a family business. At that time, my brother Ralph, sold his shares to Ogilvy Flour Mills, a publicly traded company. In 1968 John Labatt Ltd. purchased the controlling shares of Ogilvy Flour Mills and consequently acquired Ault Creamery Ltd. and Ault Milk Products Ltd.

"In November of 1975, Ault Foods (1975) Ltd. purchased the assets of Cow and Gate (Canada) Ltd., a subsidiary of the British Company, Unigate Ltd...

"In 1973 the Ault Company developed a powdered baby formula to meet the requirements of the Mexican Government and this is now sold to Compania Nacional de Subs-

tencias Populares (CONASUPO). Through development of the infant baby formula, Ault Foods Ltd., became very familiar with the technical requirements of the Mexican market. Mexican technicians would be sent to our plants and laboratories in Montreal and Winchester.

"As well, Ault Foods Ltd. developed a bar composed of dairy based powder which is used for school lunches in Mexico, specialty dairy based powders for use in the nutritional food programs in Mexico, and conducted a research project on behalf of Mexico with respect to turning milk powder into lactose and cosein.

"Through our research contracts and marketing of powdered infant formula and other specialty dairy based powders, we had continual communications with officials at CONASUPO. We also had frequent communication with the Canadian Dairy Commission. For example, CONASUPO officials would want to schedule C.D.C. visits at the same time as Ault's."

6. *Expert Witnesses*

In order to carry out my mandate adequately and to deal exhaustively with the subject matter of this Inquiry, I retained technical advisers who submitted reports and testified regarding the general aspects of the dairy industry, certain aspects of the operations of the Canadian Dairy Commission, and the policy aspects of this Inquiry. Their contributions to this Inquiry were most useful because of their experience and qualifications. Their evidence assisted me greatly in understanding the factual and policy context of the allegations and issues.

Dr. L.A. Skeoch prepared a statement entitled *An Outline of Some of the Economic Aspects of the Inquiry*, which was marked as Exhibit 11 and which is reproduced as Appendix 12 to this Report. Dr. Skeoch is a Professor Emeritus of Economics at Queen's University. He received his Master of Arts degree in Economics at the University of Toronto and his Ph.D. in Economics at the University of California at Berkeley. Following graduation he lectured in Economics at the University of Manitoba and at the University of Toronto, and was senior Economist for the Canadian Wheat Board during the years 1941 to 1946. He was the Agriculture Rehabilitation Specialist and the acting Chief of the United National Relief and Rehabilitation Mission to the Ukraine in 1946 and 1947, and subsequently, until 1957, served as Senior Economist in the Combines Branch of the Department of Justice in Ottawa. Dr. Skeoch was the first to be appointed as the Skelton-Clark Visiting Professor, Queen's University, and was a Professor of

Economics at Queen's University from 1957 to 1975. He has served as a consultant on competition policy to UNCTAD and to the Governments of Canada, Sweden and West Germany, and has appeared as an expert witness before various Canadian Parliamentary Committees and before the Antitrust Subcommittee of the United States Senate. He has written widely in the fields of industrial organization and agricultural policy, and is widely acclaimed as an outstanding scholar in those fields.

Mr. George R. McLaughlin prepared a statement, with supporting documents, entitled *The Evolution of Organization and Regulation in the Ontario and Canadian Dairy Industries*, which was marked as Exhibit 78 and which is reproduced as Appendix 13 to this Report. Mr. McLaughlin graduated in 1946 with High Honours from the Ontario Agricultural College at the University of Guelph with a Bachelor of Science degree in Agriculture, specializing in animal husbandry. Mr. McLaughlin has spent his lifetime since then as a dairy farmer. He built up a breeding herd of Holstein Friesian cattle in Canada that enjoyed a substantial reputation not only nationally but internationally. In August 1965, Mr. McLaughlin was appointed by the Ontario government as Chairman of the newly-created Ontario Milk Marketing Board. He remained as Chairman until 1976. He was a member of the Consultative Committee of the Canadian Dairy Commission from its inception in 1966 until 1976, and was a member of the Canadian Milk Supply Management Committee from 1971 to 1976. In 1974, Mr. McLaughlin was awarded the H.R. McMillan Laureate in Agriculture, which is awarded every five years to the individual judged to have made the most outstanding contribution to Canadian agriculture during the period. Mr. McLaughlin is highly knowledgeable and thoroughly experienced in every aspect of the dairy industry, and its regulation.

Mr. P. Pariseault, who has equally extensive experience in the dairy industry, particularly in the Province of Quebec and at the national level, as was shown above, has been the Chairman of the Consultative Committee of the Canadian Dairy Commission from 1966 to 1977. He submitted a memorandum to me providing detailed explanations regarding aspects of the production and disposal of dairy products in Canada, together with general comments about the Canadian dairy industry and the operation of both fluid milk quotas and industrial milk quotas. The memorandum was marked as Exhibit 146 and is reproduced as Appendix 14 to this Report.

Dr. G.A. Hiscocks and **Mr. L. Stephens** jointly prepared a general background paper entitled *Review of the Canadian Dairy Commission, Background, Creation, Policy and Operations*, which was marked as Exhibit 9 and which is reproduced as Appendix 15 to this Report.

Dr. Hiscocks obtained his doctoral degree in Agricultural Economics from the University of Illinois. Since 1965 he has studied many sectors of agriculture in Canada, of which the dairy sector is a major sector. He has written several articles, a number of which relate to the marketing of agricultural products and to marketing boards of one kind or another involving the dairy industry.

Mr. Stephens graduated from the Ontario Agricultural College at the University of Guelph in 1936. He was employed by Canada Packers Limited from 1936 until 1960. He was then employed for two years by the Pet Milk Company of St. Louis, serving in Canada as manager of the cheese division of the Cherry Hill Cheese House. From 1962 until his retirement in 1979, Mr. Stephens was employed by Gay Lea Foods of Weston, Ontario, in various capacities, starting as production manager and ending up as Vice-President and Assistant General Manager. He has been interested in industry affairs from the processing side of the industry and has served both as a director and as president of the Ontario Dairy Council. He also served for a time as a Director of the National Dairy Council, the national association of dairy processors in Canada.

7. Mexican Witnesses

Prior to the establishment of this Commission of Inquiry, when Schafer Bros. Ltd. submitted its allegations to Government officials, it relied heavily upon written statements supplied to it in 1975 by three Mexican nationals, namely, Mr. Guiseppe Rocchi, sometime General Manager of Sociedad General Mexicana de Control S.A.; Mr. Baltazar Rodriguez Ayala, former Assistant Purchasing Manager at CONASUPO, and Mr. Alejandro Carillo, a Mexican Senator.

At the beginning of this Inquiry the same three persons, as well as Mr. Hector Rodriguez Licea who was the Purchasing Manager of CONASUPO until 1970, submitted and filed evidence statements.

During the Inquiry, written interrogatories suggested by various counsel were sent to the above Mexican nationals and to CONASUPO. They were answered by Messrs. Rodriguez Ayala and Rocchi in writing.

In order to confirm or further my understanding regarding certain general matters pertaining to the subject matter of the Inquiry, invitations were sent to certain Mexican nationals to meet with me in Mexico City on October 16 and 17, 1980. Counsel for all interested parties were invited to attend and in fact, many of them including Mr. Michel Choquette attended the meetings and participated in the discussions with the Mexican witnesses.

Eight Mexican nationals were interviewed at that time, including past and present officials of CONASUPO (Mr. Enrique Rios Velazquez, Mr. Baltazar Rodriguez Ayala and Mr. Eduardo de la Torre), persons from the private sector who act as agents in Mexico for foreign suppliers (Mr. Ben Nordermann, Mr. Jose Luis Uriarte, Mr. Alberto J. Benolol and Mr. Guiseppe Rocchi), and Mr. Fidenzio

Arguelles, who has served in the Commercial Section of the Canadian Embassy in Mexico for many years with responsibility for agriculture.

The interviews so conducted in Mexico were of very considerable assistance to me, as is evident elsewhere in this Report, and the cooperation of those interviewed was much appreciated.

CHAPTER III

THE FACTUAL SETTING

(A) THE CANADIAN DAIRY COMMISSION

1. *Brief Historical Background*

Particularly after World War II the production of milk grew more rapidly than did demand, both domestically and internationally. This led to extreme downward pressures on producer incomes which added to the usual difficulties created by fluctuations in production costs and the weather, and by seasonal production peaks.

By the early 1960's the Federal Government's price support program for butter, given continually rising productivity and the growing popularity of margarine, had resulted in huge government surpluses of butter in Canada.

Although the production and marketing of fluid milk within the provinces had been the subject of regulation for many years, there was little coordination of policy between the provinces and between federal and provincial programs. Two prior experiences with a federal regulatory authority in the dairy industry, namely the ill-fated Natural Products Marketing Act, 1934, which had been declared unconstitutional by the courts, and the Wartime Prices and Trade Board, had not led to a permanent authority.

Various producer organizations cooperated to convene the Canadian Dairy Conference in February 1963 in order to deal with their concerns and to discuss their interests in achieving increased stabilization and policy coordination. Representatives of the principal dairy organizations, and of the Federal and Provincial Governments, attended the Conference on invitation. It was from this Conference that the pressure and organization developed to establish a national agency for the dairy industry.

The bill to establish the Canadian Dairy Commission was introduced and given First Reading in Parliament on June 16, 1966. It received Third Reading one week later and Royal Assent on July 11, 1966. The Act came into force October 31, 1966, and the Canadian Dairy Commission was fully operative by the time the new dairy year began on April 1, 1967.

2. *The Commission*

The Canadian Dairy Commission is a statutory corporation established by Section 3 of the *Canadian Dairy Commission Act*. It consists of three members

appointed by the Governor in Council, one of whom is designated as the Chairman (and Chief Executive Officer) and one as Vice-Chairman. The three members hold office during pleasure of the Governor in Council.

The Commission employs approximately 60 persons, all of whom work at the Head Office which, by statute, is required to be in Ottawa.

By virtue of Section 4 of the Act, the Commission is constituted an agent of Her Majesty and may act only in that capacity. It may enter into contracts, and property acquired by it may vest, in the name of Her Majesty or in the name of the Canadian Dairy Commission.

By Section 4(4) of the Act, legal proceedings in respect of any right or obligation acquired or incurred by the Commission on behalf of Her Majesty may be brought or taken by or against the Commission in the name of the Commission in any court that would have jurisdiction if the Commission were not an agent of Her Majesty.

3. *Outline of Powers*

Section 8 of the Act sets out the objects of the Canadian Dairy Commission:

"8. The objects of the Commission are to provide efficient producers of milk and cream with the opportunity of obtaining a fair return for their labour and investment and to provide consumers of dairy products with a continuous and adequate supply of dairy products of high quality."

"Dairy product" is defined by Section 2 to mean "milk, cream, butter, cheese, condensed milk, evaporated milk, milk powder, dry milk, ice-cream, malted milk, sherbet, or any other product manufactured wholly or mainly from milk."

Section 9(1) of the Act sets out the principal powers of the Commission. It is difficult to summarize and is now reproduced in full:

"9(1). Subject to and in accordance with any regulations made (a) under this Act, the Commission may

- (a) purchase any dairy product and package, process, store, ship, insure, import, export, or sell or otherwise dispose of any dairy product purchased by it;
- (b) make payments for the benefit of producers of milk and cream for the purpose of stabilizing the price of those products, which payments may be made on the basis of volume, quality or on such other basis as the Commission deems appropriate;

- (c) make investigations into any matter relating to the production, processing or marketing of any dairy product, including the cost of producing, processing or marketing that product;
- (d) undertake and assist in the promotion of the use of dairy products, the improvement of the quality and variety thereof and the publication of information in relation thereto; and
- (e) do all such acts and things as are necessary or incidental to the exercise of any of its powers or the carrying out of any of its functions under this Act."

The word "marketing", which appears in Section 9(1)(c), above, also appears in certain other sections of the Act that will be referred to. Section 2 defines "market" as meaning "to market in interprovincial or export trade".

No regulations relevant to the subject matter of this Inquiry have been made under the Canadian Dairy Commission Act, but the scope of the regulation-making power may be relevant to the construction of Section 9(1) and to an assessment of the powers that can be exercised by the Canadian Dairy Commission in the absence of regulation. The principal regulation-making power is set out in Section 12(1) of the Act:

"12(1). The Governor in Council may make regulations regulating the marketing of any dairy product, including regulations

- (a) providing for the marketing of any dairy product on a quota basis;
- (b) designating the agencies through which any regulated product shall be marketed;
- (c) providing for the issue of licences to persons engaged in the production or processing of a regulated product for market, prescribing the fees therefor and providing for cancellation or suspension of licences;
- (d) prohibiting persons from engaging in the marketing of any dairy product, or any class, variety or grade thereof, in whole or in part except under the authority of a licence;
- (e) prescribing the books and records to be kept by persons engaged in the production or processing of a regulated product for market and the information to be furnished by such persons;
- (f) authorizing the Commission to fix, impose and collect levies or charges from

persons engaged in the marketing of any dairy product or the production or processing of a regulated product for market and for such purposes to classify such persons into groups, fix the levies or charges payable by the members of the different groups and to use such levies or charges for the purpose of carrying out its functions under this Act;

- (g) providing for the seizure and disposal of any regulated product marketed in contravention of any regulation made under this section; and
- (h) generally, for carrying out the purposes and provisions of this Act."

Two further statutory provisions should be noted, although they appear not in fact to have been used:

"9(3). The Commission may make such rules as it deems necessary for the regulation of its proceedings, for the fixing of a quorum for any of its meetings and generally for the conduct of its activities under this Act."

"11. In exercising its powers under this Act or the regulations in relation to the importation or exportation of any dairy product, the Commission shall comply with any directions from time to time given to it by the Governor in Council or the Minister."

4. *Funding*

The Canadian Dairy Commission administers very substantial public funds. It has an annual budget of approximately \$300 million. Deducting the export levies recovered from producers, from the amount paid in the form of direct producer subsidies, it appears that over half of the budget is paid as direct subsidies to producers in connection with milk and cream that is used for industrial purposes, and approximately one third of the budget is devoted to covering the cost of export sales of surplus products.

Virtually all the funding for these activities derives from Parliamentary appropriations for the work of the Canadian Dairy Commission, paid to the Commission through the Agricultural Stabilization Board for the purpose of stabilizing the price of milk and cream.

Flexibility in funding is achieved when necessary by loans to the Commission out of the Consolidated Revenue Fund on approval by the Governor in Council. Section 16(2) of the Act provides that the outstanding loans at any time shall not exceed \$100 million.

5. *Consultative Committee*

There are, of course, certain general mechanisms whereby Parliament and the Minister of Agriculture can require the Canadian Dairy Commission to answer for or to explain its policies and their administration. In addition to the members of the Commission holding office during pleasure of the Governor in Council, the Commission is required to report formally every year to the Minister, which Report must be laid before Parliament. Also, Parliament votes the appropriations for the work of the Canadian Dairy Commission, and each year the Commission is required (Section 10(1)) to submit to the Minister an outline of the program by which it proposes to carry out its functions under the Act for the forthcoming year.

There is, however, a further mechanism provided for in the Act that appears to have been intended to assist the Commission in matters pertaining to the formulation of policy relating to production of dairy products and their marketing in interprovincial or export trade. This mechanism is the Consultative Committee, and since one of the allegations made by Schafer Bros. Ltd. (Allegation B.8, in part) concerns the Consultative Committee, a brief account of its general nature and operations will be helpful.

Sections 5 and 6 of the *Canadian Dairy Commission Act* provide for the Consultative Committee as follows:

“5.(1) The Minister shall appoint a Consultative Committee consisting of a chairman and eight other members.

(2) Each of the members of the Consultative Committee shall be appointed for a term not exceeding three years, except that of those members first appointed three shall be appointed for a term of two years, three shall be appointed for a term of three years and three shall be appointed for a term of four years.

“6.(1) The Consultative Committee shall meet at such times as are fixed by the Commission and shall advise the Commission on such matters relating to the production and marketing of dairy products as are referred to it by the Commission.

(2) The members of the Consultative Committee may be paid for their services such remuneration and expenses as are fixed by the Governor in Council.”

Several witnesses testified regarding the membership and nature of the Consultative Committee during the years which were examined by this Commission of Inquiry, which also happened to be the first ten years

of the existence of the Canadian Dairy Commission. Throughout the tenure as Chairman of Dr. S.C. Barry, and continuing through most of the tenure of Mr. E.J. Powers, the Consultative Committee appears to have served a very useful advisory function to the Canadian Dairy Commission, meeting monthly except for the summer months and acting, in effect, like a board of directors without authority. Ultimately, the influence of the Consultative Committee appears to have derived from the fact that it was composed of knowledgeable and experienced individuals from different parts of the dairy industry. Mr. P. Pariseault was Chairman of the Committee from the inception of the Commission, and the Committee, in 1966 until late 1976 or early 1977. Mr. George R. McLaughlin was also a member throughout this same period. Until 1970, six of the members of the Committee were in essence producers, and three were processors. With the appointment of Mr. Samuel Ault in 1970, five of the members were producers and four were processors.

The statutory provisions relating to the Consultative Committee are sufficiently general that much depends on the particular chairman of the Commission, and the abilities of the individuals on the Consultative Committee, in determining exactly how and to what extent the Committee is used by the Commission.

It appears that increasingly, after the establishment of the Canadian Milk Supply Management Committee in 1970-71, the activity and usefulness of the Consultative Committee with respect to advice on production policies began to diminish, and by 1975 the Committee was being convened only approximately every two months in order to review statistics that were presented to it. This lack of input into policy formation resulted in a growing dissatisfaction among members of the Consultative Committee, with the result that a Special Committee of the Consultative Committee was established in 1976 to consider the proper role of the Consultative Committee. The Report of this Special Committee was marked as Exhibit 109 in this Inquiry. Its first recommendation reads in part as follows:

“(1) Purpose: The purpose should be to review with the C.D.C. industry strategy and problems well in advance of the time of making these decisions. For example: To advise on the development of marketing philosophy and strategy. Particularly in the export field, as well as for domestic products. For instance, the need to clear up a long standing question of whether the C.D.C. should handle all exports and/or imports. At least there should be a clear understanding of what the role will be of the various segments of the industry.”

The Special Committee further recommended that four meetings per year should be adequate provided that proper documentation was submitted to the members in advance of the meetings.

As of the the conclusion of the evidence given before this Commission of Inquiry no appointments to the Consultative Committee had been made after 1975. The result of this was that by the end of 1976 the membership of the Committee was being depleted. The last meeting of the Consultative Committee was in February 1977, and despite the depleted membership of the Committee there is some evidence that one of the reasons for these being no further meetings was that at the meeting in February 1977 the members of the Committee disagreed with the Chairman of the Canadian Dairy Commission on certain policy matters, as a result of which he chose not to summon them to further meetings. This may or may not have been one of the reasons. In any event, the Annual Report of the Canadian Dairy Commission to the Minister of Agriculture for the year ended March 31, 1977, states as follows, regarding the Consultative Committee:

"During the past years the Committee was consulted on major policy decisions and members advised the Commission throughout the year on various aspects of the Dairy Program.

Regarding the frequency of meetings, the Committee reviewed its manner of operation with the Commission and it was decided to discontinue the regular monthly meeting in favour of fewer meetings. These will be scheduled prior to important decisions being taken to maximize the effectiveness of the contributions of the Consultative Committee to the Commission's operations."

As stated above, the Chairman of the Commission did not summon any further meetings of the Committee after February 1977.

All appointments to the Consultative Committee had expired by the end of 1978.*

Reportedly, in November 1980, the Minister of Agriculture announced nine new appointments to the Consultative Committee.

(B) THE GENERAL SYSTEM

1. *The Regulatory Structure**

* In this section I have relied to a considerable extent upon the evidence given by Mr. McLaughlin and Mr. Pariseault. In addition to the background papers and the evidence of this Inquiry, see generally D.P. Stonehouse, "Government Policies for the Canadian Dairy Industry", (1979) 14 Canadian Farm Economics 1-11 (Agriculture Canada).

The Canadian dairy industry is an important sector of Canadian agriculture. The production of milk and cream as a source of Canadian farm cash receipts is exceeded only by the production of beef and grain. Consumer expenditures in Canada for milk and dairy products account for about one dollar out of every six that Canadians spend for food. The production and processing sectors of the dairy industry taken together account for approximately one per cent of Canada's gross national product. Canada is largely self-sufficient with respect to dairy products.

There are also other important social realities about the Canadian dairy industry. Approximately three-quarters of Canadian milk production occurs in Quebec and Ontario, with Quebec being the larger of the two. This means that in those two provinces, and particularly in Quebec, dairying and dairy farmers tend to be more important factors for policy making than they tend to be in other provinces.

Although consumer demand for milk and dairy products is probably the portion of consumer food needs that is least likely to decrease as a result of price increases, per capita demand in Canada for dairy products other than fluid milk decreased significantly in the 1970's. This decline was probably, at least in part, attributable to substantial increases in the prices of such products in Canada, which increases exceeded increases in the consumer price index and were also, at least since 1974, more than double comparable increases in the United States.

Total milk production in Canada also decreased slowly but steadily throughout the 1970's.

Production and price levels of dairy products in Canada are significantly influenced, and to an extent determined, by Government policies and regulations pertaining to the dairy industry.

The different uses for milk, together with requirements of Canadian constitutional law, have led to the existence of two sectors in the Canadian dairy industry, namely, fluid milk and industrial milk. Fluid milk has been loosely described as the milk we drink, and industrial milk as the milk we eat.

Fluid milk is consumed in fresh fluid form, is relatively perishable and is costly to transport due to its bulk. Fluid milk commands a higher price for producers than does industrial milk because of a greater need to maintain rigorous sanitation standards in production and to assure daily supply.

Industrial milk, sometimes called "manufacturing milk", refers to milk and cream that is processed or used to manufacture a wide variety of dairy products including cheese, butter, milk powder, condensed milk and evaporated milk. These products are not as perishable as fluid milk, are relatively easily transported, and are not required on a fresh daily basis.

Skim milk powder is a by-product of the manufacture of butter. A hundred pounds of "standard" raw milk, namely, milk with a 3.5% butterfat content, yields approximately 4.2 pounds of butter and 8.0 pounds of skim milk powder.

In the past, the market for industrial milk was mainly supplied by farmers whose output was destined solely for that market, and the market for fluid milk was filled by other dairy farmers. Today, due largely to similar production standards and coordination in Federal and Provincial Government policies and administration, most dairy farmers fill both fluid and industrial milk quotas. Production standards for industrial milk have risen. Indeed, the same provincial government tank truck typically picks up each farmer's production at his farm and the distribution of that milk is handled by the Provincial marketing bodies.

Essentially, provincial governments have jurisdiction to pass laws relating to the production, marketing and prices of fluid milk, while the Federal Government has jurisdiction to pass laws relating to the production, marketing and prices of industrial milk. Little fluid milk crosses provincial boundaries, whereas most processed dairy products move readily into interprovincial and export markets.

Both levels of government have adopted policies, rules and mechanisms for the control of supplies and the determination of prices, in order to seek to ensure what is determined to be a fair return to producers and adequate supplies for consumers.

Fluid Milk

The marketing of fluid milk is controlled by provincial boards or agencies in every province except Newfoundland.

According to Mr. Pariseault and Mr. McLaughlin, the control and maintenance of supply is accomplished at the provincial level by the allocation of quotas to producers. Individual quotas are allocated within the framework of the total provincial fluid milk requirements, as calculated, and represent for each quota holder his amount or share of the total production of his province or region. The quotas provide for some tolerance in order to take account of unforeseen circumstances that may arise. Quotas may be acquired, increased or decreased in accordance with such methods as may be permitted or prescribed by regulation. These normally include purchase from another farmer, purchase from a quota exchange and transfer.

Quotas may be reduced or lost because of a failure to produce to the quota level. In Ontario, according to Mr. McLaughlin, instead of being subject to a variation in individual quota because of individual changes in sales, producers have agreed that the same

individual quota will be retained with a change in the percentage of their milk entitled to the fluid milk price.

Production within his quota guarantees a producer the payment of the price set for fluid milk by the competent provincial authority. As put by Mr. McLaughlin:

"It is in fact a contract which requires him to supply a certain daily volume of milk, usually with some tolerance allowed for unseen circumstances, and which guarantees him a certain level of payment for the quota milk, based upon compositional and hygienic quality."

Production which exceeds the fluid milk quota will be diverted to manufacturing use paid for on the basis of current world prices for butter and skim milk powder. The producer can protect himself from this effect of over-quota fluid milk production by acquiring a quota for industrial milk to cover the excess volume, and he will then receive such benefits as are enjoyed by industrial milk quota holders for his surplus. In the words of Mr. Pariseault:

"The surpluses of milk produced under fluid milk quotas, but not required by the fluid milk market, have to be produced under the market sharing quota (MSQ) released by the Canadian Dairy Commission (CDC). This "surplus milk" will then cause no harm to the supply management of industrial milk and will be eligible to the CDC subsidy on industrial milk..."

Any farmer who produces altogether outside of quota can only expect to receive the world market price, through the central provincial buyers, for his milk shipments. This is a price at which, Mr. McLaughlin said, "he could not survive under Canadian cost conditions". In fact, over-quota production is effectively discouraged by the absence of the subsidy and by special penalty levies. Accordingly, levels of output are controlled.

Mr. McLaughlin stated that the price to be paid to producers for their fluid milk is fixed by some compulsory process, depending upon the province:

"Such prices are generally established through negotiation and, if necessary, by arbitration. In some provinces prices to farmers are established by government regulation after public hearings. In Ontario, prices are established by regulation of the producer marketing board, and are then subject to appeal to a government tribunal. Some provinces also regulate prices which processors and retailers may charge consumers."

Formulae are generally used to guide the setting of the levels of prices to dairy farmers. The formulae seek to take into account production costs (labour, invested capital and equipment, and feed) and market conditions.

The procedure for payment varies from province to province. In Ontario, the farmer sells his milk directly to a Provincial board, which pays him after making deductions for costs of administration, promotion, advertising and transport. As stated by Mr. McLaughlin:

"Once in production, he will sell his milk to his marketing board, the OMMB, to market it for him. In fact the OMMB buys the milk from him at his farm, and sells it to the processors. It contracts with milk transporters as agents to pick up the milk at the farm and deliver it to a designated processing plant. The farmer may not know the plant destination of his milk, and he may not care for he is paid the same wherever it goes. The processor pays the OMMB on the basis of the end use of the milk. Prices vary from fluid milk use (the highest priced category, called Class 1) to that used for the manufacturing of butter and skim milk powder (called Class 5). The returns from Classes 1 and 2, which are fluid uses, are pooled and the pooled or average price is paid to each producer in relation to his fluid quota, modified by factors for hygienic and compositional quality, less OMMB costs for administration of the Board and for promotion and advertising, and less a pooled transportation charge. Classes 3 to 5 are industrial use categories, and returns from the sale of milk used in these categories are pooled, and this pooled price is paid to each producer in relation to his MSQ, modified by factors for hygienic and compositional quality, less OMMB costs, and less a pooled transportation charge."

In Quebec, according to Mr. Pariseault, the fluid milk is delivered directly to dairies, who pay the Federation of Fluid Milk Producers, which in turn pays the producers a predetermined price less the costs for advertising and so on.

As stated, in the case of the typical dairy farmer who has both fluid and industrial milk quotas, shipments in excess of his fluid quota are allocated to his industrial quota.

Industrial Milk

The Canadian Dairy Commission is the key agency in the administration, and in many respects the formulation, of the Federal Government's dairy policy.

The Canadian Dairy Commission administers a number of programs that are, together, intended to stabilize producers' returns at a satisfactory level. The two principal policies adopted to this end are the price support programs and payment of a direct subsidy to producers of industrial milk and cream. By these policy instruments, both of which were instituted by the Agricultural Stabilization Board and carried on by the Canadian Dairy Commission, the Commission seeks to help producers achieve a "target support price" or "target return".

The two main price support programs for this purpose are those for butter and skim milk powder. Under these programs the Canadian Dairy Commission offers to purchase all butter and skim milk powder produced (by processors) in Canada, and that meets prescribed specifications, at a stated price per pound. The support prices give a calculable value to standard milk (3.5% butterfat content) and thus convert to a market price guarantee for the milk. By then deducting an "assumed processors' margin" to cover costs of and profit for the processor, an estimated market return to the producer for the sale of his industrial milk is arrived at, calculated on a hundred-weight basis. The support prices are designed to enable processors to pay this basic market price for industrial milk.

To this market return for the producer's milk is added the subsidy paid directly by the Canadian Dairy Commission, from public funds, to the producer for his industrial milk shipments. This subsidy is also calculated at so much per hundredweight of standard milk, sometimes also expressed in terms of so much per pound of butterfat. For example, the current direct producer subsidy of \$2.66/cwt is 76 cents per pound of butterfat. (Since the metric system was put into effect the calculations are now done in terms of hectolitres, but the principles and steps are the same. To avoid confusion for purposes of comparison, the pre-metric calculations are still in common use.)

These two income sources, namely, the market return through the support price (paid ultimately by consumers), and the subsidy (paid ultimately by taxpayers), make up the target support price per hundredweight of milk to the producer. From this amount the producer must pay an export levy, discussed below in this Chapter.

The Canadian Dairy Commission had to fix individual quotas for industrial milk, initially called "subsidy eligibility quotas", in order to limit the amount of its subsidy payments. This initial system of quotas was replaced, beginning in 1971, pursuant to an exercise in federal-provincial cooperation apparently inspired by the Dairy Farmers of Canada. This was the Interim Comprehensive Milk Marketing

Plan, administered by a federal-provincial body called the Canadian Milk Supply Management Committee.

The Interim Comprehensive Milk Marketing Plan resulted in part from a growing degree of interdependence between the fluid milk and industrial milk sectors. Similarities in production between the two have been referred to above. In addition, restrictions on producer entry into or expansion in one sector, by means of changes in quota limitations or subsidy eligibility rules, can affect the quantity of production and the prices in the other sector. A shift in consumer demand to 2% fluid milk, and from butter to margarine, affects the butterfat surpluses that have to be coped with.

All provinces except Newfoundland, which has no dairy industry to speak of, signed the Interim Comprehensive Milk Marketing Plan (see Appendix 13, Schedule 19, to this Report). Quebec and Ontario signed in December 1970, Prince Edward Island in 1971, the three prairie provinces in 1972, British Columbia in 1973, and Nova Scotia and New Brunswick in 1974. In 1974 the Comprehensive Milk Marketing Plan was signed, in effect continuing the Interim plan.

The Canadian Milk Supply Management Committee is made up of two producer representatives and one government board representative from each participating province, plus three representatives from the Canadian Dairy Commission. Representatives of the Dairy Farmers of Canada also attend. One of the Canadian Dairy Commission representatives serves as chairman.

The central feature of the Comprehensive Milk Marketing Plan is the Market Sharing Quota ("MSQ") Program. The way this works is that the Canadian Milk Supply Management Committee makes an estimate each year of Canada's butterfat "requirements" for the forthcoming year, and converts this estimate to a volume of standard milk. It then adds 5% as a so-called "sleeve" to ensure against errors in the estimate, and thus arrives at a global MSQ figure. This global figure is then allocated by the Committee among the provinces. (For example, as of 1979, 48% of the total was allocated to Quebec and 31.3% to Ontario) The further allocation of each province's share among the individual producers in each province is done by the provincial regulatory agency.

It is not intended in this section of the Report to attempt anything other than a general description of what is in some respects rather complicated, but an excerpt from Mr. Pariseault's evidence relating to MSQ transfers may be helpful:

"In Quebec, MSQ are sold and purchased at public auctions. In Ontario, bids and offers

for MSQ are channelled by an exchange quota system working by telex. Elsewhere, MSQ are sold to and bought from the provincial marketing board at a nominal price.

These MSQ removed from the producer are put in reserve. Whenever a producer sells his quotas, the Federation takes 25% of the MSQ for the reserve. This reserve is used either to be distributed equally amongst actual producers or to attenuate an eventual decrease of MSQ decided by the Canadian Management Supply Committee. A producer can lend to another producer a maximum of 20% of this MSQ for a period not exceeding two years, etc."

The Canadian Dairy Commission ties its subsidy and levy programs to the MSQ shares allocated to each individual producer as set out above. The direct producer subsidy, paid monthly by Canadian Dairy Commission cheque to each producer on the basis of his prior month's shipments, is paid only on the 95% of the MSQ that reflects the nation's requirements as estimated. It is not paid on shipments made within the 5% sleeve portion unless and until, at the end of the year, it materializes that some or all of the sleeve portion was required for domestic use, in which event the subsidy is then paid on such portion. Similarly, a "contingency levy" is collected during the year on all MSQ shipments by producers, in order to build up a fund to defray the costs of export disposal in the event that the sleeve production turns out to be surplus to actual Canadian requirements. Contingency levy funds are subject to refund to the extent that sleeve production is used domestically.

The sleeve is something that exists in national terms. If some provinces have a good dairy year and others have problems with herd sickness, pasture quality, or some such thing, it may be that a disproportionate amount of the sleeve production for that year will come from certain provinces. This can have the result, in terms of an individual producer, of his having no sleeve production in a given year and therefore obtaining a full refund of the contingency levy collected from him during the year.

In addition to the contingency levy imposed on all MSQ shipments to help defray the possible costs of disposing of sleeve production on export markets, a separate export levy is assessed on all MSQ shipments to cover the export costs of skim milk powder produced from within-quota milk. Both these levies, together with any penalty levies for over-quota production, are now collected for the Canadian Dairy Commission by provincial authorities by means of deductions from the payments for milk that are received from the processors. In the 1978-79 dairy year the contingency levy was 20¢ per hundred-

weight, the export levy \$1.00 per hundredweight, and the over-quota levy \$7.50 per hundredweight. Before remitting the net market returns, after levy deductions, to each producer, the provincial agency makes a further deduction to defray its own general administrative costs.

Adoption of the supply management MSQ program had a positive effect on producer returns (and a corresponding effect on consumer prices). As to the general effect of restricting supply, the Canadian Dairy Commission Annual Report for 1969 stated:

The stabilization of producer's returns is dependent in considerable measure on the maintenance of a reasonable balance between the supply of dairy products and the effective demand. It is for this reason that a limitation is placed on the total quantity of milk and cream on which subsidy will be paid....

As to the effects of the adoption by Quebec and Ontario of the MSQ Program, the Canadian Dairy Commission stated as follows in its 1971 Annual Report:

The adoption of this program, with its safeguards against excessive production, in the two provinces supplying 80 per cent of Canadian manufacturing milk and cream, made possible the increase in product support prices on February 8, with the resultant increase in prices for manufacturing milk to producers in all provinces.

The next significant development in Federal Government dairy policy, as far as direct impact on prices and returns is concerned, was the long term dairy policy adopted in 1975. A central feature of that policy was implementation of an "Industrial Milk Returns Adjustment Formula", as the basis for adjusting target returns to dairy farmers for their production of industrial milk and cream, referred to earlier in this section of this Report.

The Canadian Dairy Commission regards the Returns Adjustment Formula as its main mechanism for providing efficient producers with the opportunity of obtaining a fair return for their labour and investment. The effects of changing statistical components of the Formula are regularly calculated, and if changes to the target support price of more than a certain small percentage are indicated, the target support price can be adjusted as frequently as every three months.

The Returns Adjustment Formula has three components, weighted as follows:

1. A cost of production index (45%). This index accords weights internally to a variety of cash and capital input costs that are, in effect, the costs of production. The items include feed, breeding fees,

veterinary and similar expenses, machinery and automobile expenses, gasoline and oil, machinery rental, fertilizer, crop expenses, land and building repairs, taxes and insurance, hydro and telephone, and hired labour. Mr. Cloutier stated in evidence that investment costs of herds, buildings and quotas were also taken into account.

2. A family labour earnings index (35%). The consumer price index is applied here to measure changes in earnings.
3. A judgement factor (20%). Mr. Cloutier referred to this as a Ministerial discretion. The 1978 Annual Report of the C.D.C. states that factors considered are significant changes occurring in levels of dairy product stocks, changes occurring in other countries to dairy producer returns, and major changes in competitive processing costs.

Finally, it should be noted that the Federal Government's target support price or target return is just that, a target. Variations in production from quota levels, and surplus disposal problems, result in certain levies that frequently make the actual return less than the target. Further, the actual processor margins are set by provincial authorities and variations as between provinces occur. Mr. Cloutier observed that usually producers in Quebec and Ontario are, in fact, able to achieve higher actual returns than are producers in other provinces.

Further elaboration of the background, context and details of the regulatory structure outlined in this Section of the Report are set out in the background papers prepared for the Commission of Inquiry by Messrs. McLaughlin, Pariseault and Hiscocks and Stephens, which are reproduced as Appendices 13, 14 and 15 respectively to this Report. The article by Stonehouse, referred to at the commencement of this section, also contains a useful and readable summary of the policies.

In illustrating the general description that has been set out in this section of the Report, the following two charts and table of reference data may be helpful.

2. *International Trade in Skim Milk Powder*

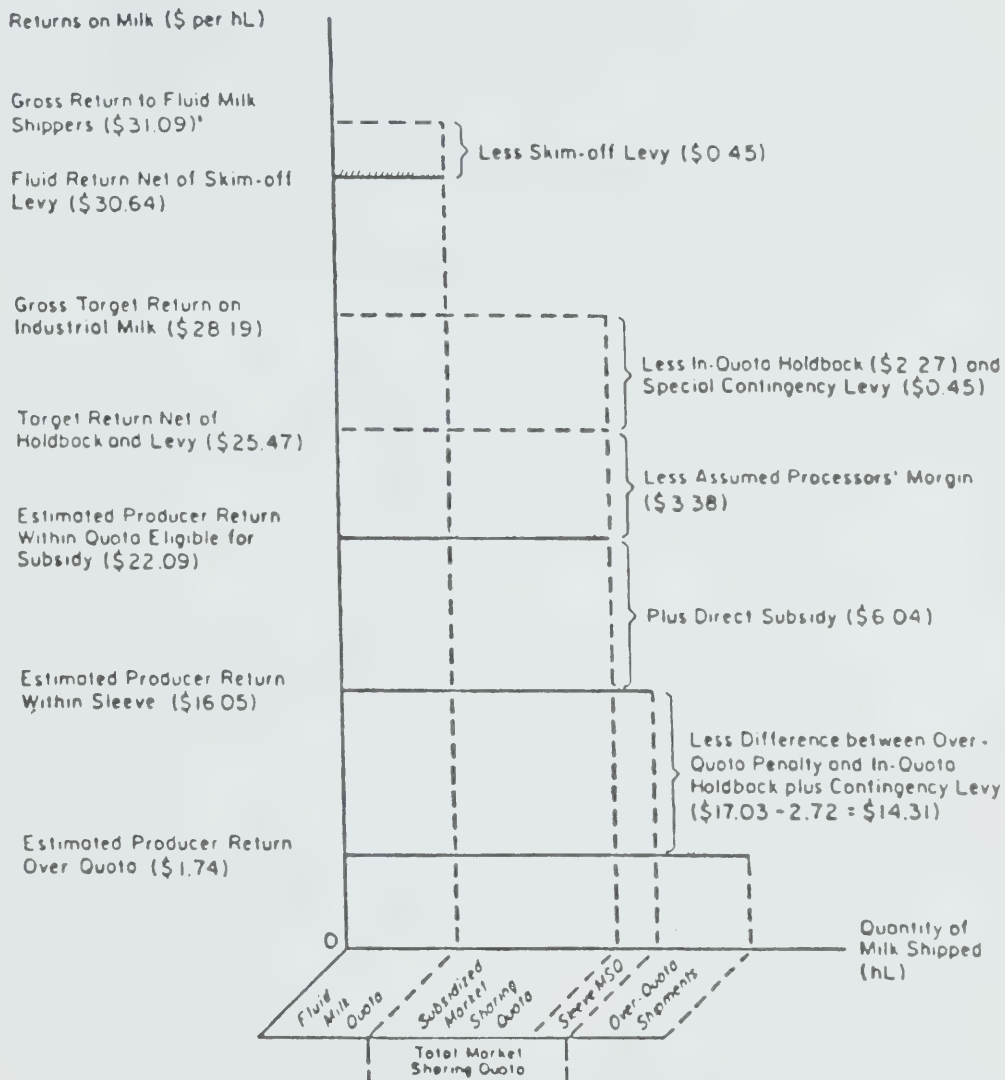
The major producers and exporters of skim milk powder are the European Economic Community, New Zealand, Australia, the United States and Canada. These countries maintain some form of support programs for their dairy farmers and restrict imports into their own domestic markets.

The principal importers of skim milk powder have been Japan, Spain, Indonesia, Thailand, the Philippines, and the larger, more developed countries of Latin America including Mexico and Cuba.

Canada is a small exporter of skim milk powder compared, particularly, to the European Economic

IMPACT OF DAIRY POLICIES ON MILK PRODUCERS' RETURNS

(April 1, 1978 Values* Used as an Illustration)

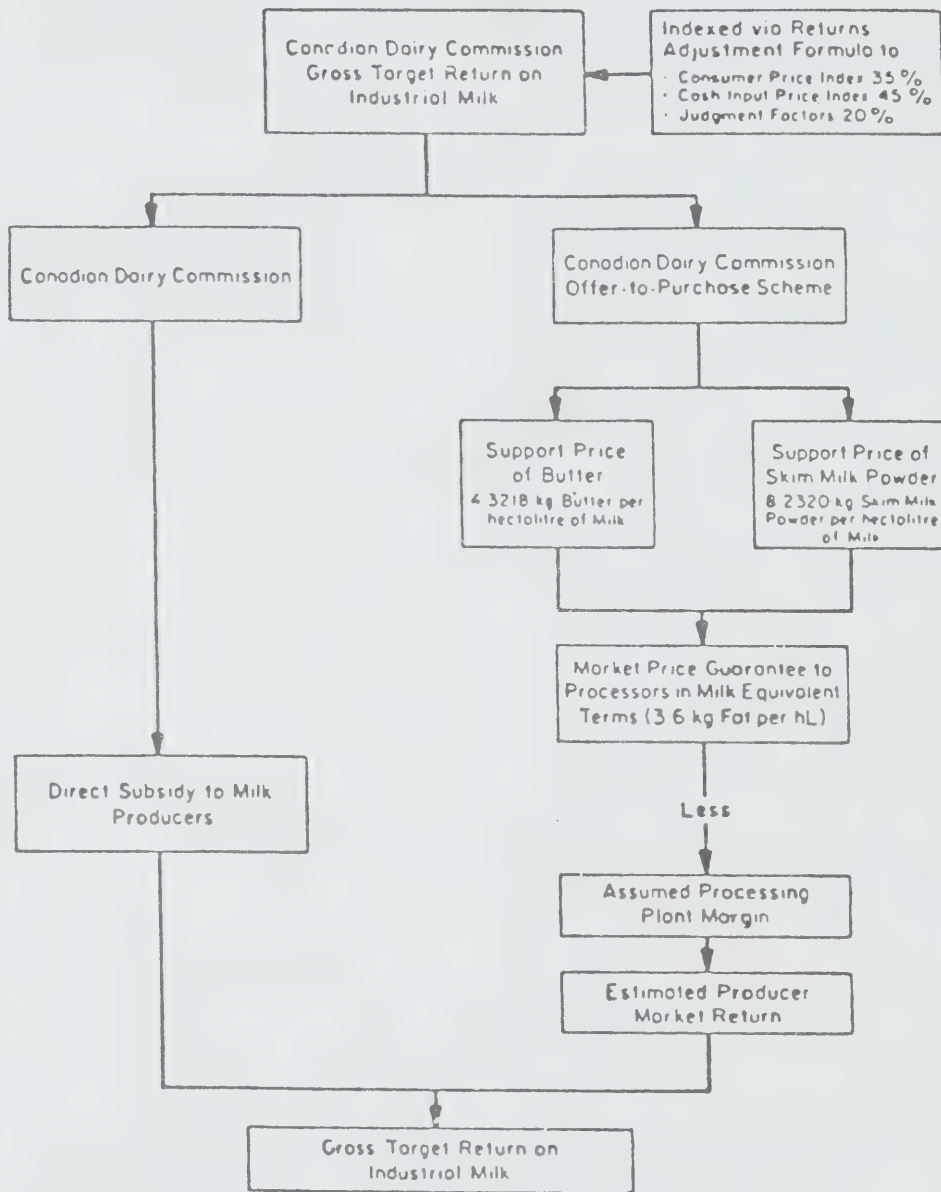


* Source: Dairy Farmers of Canada, *Dairy Facts and Figures*, 1978, Ottawa, 1978

^a National average minimum price paid to fluid producers, f.o.b. processing plant - Source: Agriculture Canada, *Dairy Product Market Report*, Vol. 53, No. 11, Ottawa, April 1978

Source: D.P. Stonehouse, "Government Policies for the Canadian Dairy Industry", (1979) 14 *Canadian Farm Economics*, 1 at p. 9

UNIT RETURNS-SETTING MECHANISM FOR INDUSTRIAL MILK



Source: D.P. Stonehouse, "Government Policies for the Canadian Dairy Industry", (1979) 14 *Canadian Farm Economics*, 1 at p. 5

REFERENCE DATA FOR 1966-1977

Date	Target Support Price (\$/100 Lbs. milk)	Direct Producer Subsidy (\$/100 lbs. milk)	Support Price Skim Milk Powder (\$/lb.)	Export Levy (\$/100 lbs. milk)
1966-67	4.10	0.85	—	0.10
1967-68	4.75	1.21	0.20	0.11
1968-69	4.85	1.31	0.20	0.15
1969-70	4.85	1.25	0.20	0.26
1970-71	4.85	1.25	0.20	0.26
1971-72 (Apr. 71)	5.24	1.25	0.24(Feb/71)	(0.26)
Aug. 16, 71	5.49	1.25	0.26	0.20
Oct. 1, 71	5.49	1.25	0.26	0.10
1972-73	5.69	1.25	0.29	0.10
1973-74	6.55	1.45	0.35	0.30
1973-74 (Aug. 73)	6.70	1.45	0.38	0.10
1974-75 (Apr. 74)	8.50	2.30	0.50	0.15
June. 74	8.76	2.56	0.50	0.15
Aug. 1, 74	9.41	2.56	0.54	0.15
Jan. 24, 75	10.02	2.56	0.59	0.15
1975-76 (Apr. 75)	11.02	2.66	0.64	0.45
July. 75	11.02	2.66	0.64	0.90
Oct. 75	11.02	2.66	0.64	0.65
1976-77 (Apr. 76)	11.45	2.66	0.68	1.35
1977-78 (Apr. 77)	11.86	2.66	0.70	1.20

Source: *Canadian Dairy Commission Annual Report*, 1978.

NOTE: The above data covers only the years which were the subject of this Commission of Inquiry. As of August, 1979, the figures for the above were:

Target Support Price: \$13.67/cwt.
direct Producer Subsidy: \$2.66/cwt.
Support Price, Skim Milk Powder: 83.5 cents per pound
Export Levy: \$1.00/cwt.

Community. Due to transportation costs, however, Canada has certain advantages competing for export sales to Latin America and the Caribbean.

Fresh skim milk powder is used for home consumption (both for reconstituting as fluid milk and in baking), for commercial baking, for making other dairy products such as evaporated milk, condensed milk, yogurt and ice-cream, for food mixes and soups, and the like. Older skim milk powder, sold at a lower price, is used in animal feed to improve the yield from livestock.

International trade in skim milk powder is vitally affected by the quantities of existing surpluses in exporting countries from time to time, by changes in the export assistance granted by these countries to the exporters of those surpluses, by changes of various types in demand patterns, and by the existence of certain trading agreements.

Competition in the international supply of skim milk powder intensified in the 1960's as surpluses resulting in part from domestic agricultural support programs increased.

In 1970, in an attempt to introduce more order into international trade in skim milk powder and to protect established trading relationships, the major exporting countries concluded an International Arrangement on Skim Milk Powder under the General Agreement on Tariffs and Trade. This arrangement set a minimum price for export sales of skim milk powder destined for human consumption and provided for control procedures to ensure that skim milk powder sold for animal feed, which was not subject to the same minimum price provision, was not used for human consumption. The Arrangement was for one year, renewable on a yearly basis, and provided for adjustment of the minimum price from time to time as might be considered desirable. The Arrangement was renewed from year to year throughout the 1970's. The minimum price set in 1970 under the GATT Arrangement was US\$200 per metric ton. International market conditions during the first half of the 1970's, however, were such that the minimum price was increased first to US\$250 and then to US\$350 per metric ton.

International prices for skim milk powder more than doubled during the years 1972 to 1974 from the levels that had obtained in 1970-71. Exports by major producing countries increased by some 30% in 1973 and continued at a high level into 1974. The stocks held by these countries as surplus declined markedly.

Apparently, the major contributing factor to the relatively strong world demand for skim milk powder in these years was the emergence of a world-wide scarcity of animal feeds. For some of this time the United States embargoed the export of soybean products, which put a strong upwards pressure on the

demand for, and the price of, skim milk powder as a substitute animal feed. As well, in 1973/4 the United States substantially increased its own import quota for skim milk powder.

Following a slump in 1974-75, international shipments of skim milk powder have continued to increase, but at a slower pace, with growing markets in Japan, Mexico and certain developing countries. This increase has not solved the problem of surpluses in exporting countries because many importing countries have expanded their own domestic production of skim milk powder, and overall production has continued to increase at a greater rate than demand.

From 1975 to 1977 international prices of skim milk powder moved sharply downward towards the GATT minimum price of US\$350 per metric ton set in the peak year of 1974. This trend reversed, however, in early 1977 and since that time the human food price internationally has increased continuously to 1980 so that by May 1980 it was US\$950 to US\$1000 per metric ton f.o.b. country of origin (see Exhibit 165).

Canada

Canadian price support programs affecting skim milk powder were expanded in the latter half of the 1960's at the same time as international competition in the supply of skim milk powder was intensifying, with the result that Canada experienced serious problems at that time in the disposal of its surplus skim milk powder.

Canada, in dealing with its surplus, imposed import restrictions and granted export subsidies. The export subsidy was paid to an exporter on evidence that the powder had been exported. Until 1969, if a private exporter purchased the skim milk powder from the Canadian Dairy Commission, he would first pay the Canadian support price for it and later, after exporting it and furnishing the Canadian Dairy Commission with proof of export, he would be paid the export subsidy by the Canadian Dairy Commission. An exporter who sourced his skim milk powder from the private sector (including processors who might export their own powder) would claim the subsidy in the same way, namely, upon proof of export. In January 1969 the Canadian Dairy Commission instituted the practice of allowing purchases from its stocks at 2 cents per pound above the subsidized price for export sales and later refunding the 2 cents upon receiving satisfactory proof of export. The cost to the exporter of financing the difference between the domestic price of the powder and the subsidized price, until such time as he could furnish proof of export, could have an important effect on the profitability of an export transaction in a competitive environment. It was essential that this financial guarantee of export be reduced to the lowest effective level.

The Canadian Dairy Commission's Annual Reports chronicle the fluctuations that have occurred in the production and disposal of Canada's skim milk powder since 1966. In 1967, as stated above, the Commission accumulated substantial stocks of skim milk powder which were surplus both to Canadian demand and to export sales negotiated for commercially-owned stocks. Production of skim milk powder had, in fact, increased from 120 million pounds in 1957 to 316 million pounds in 1967. Canadian consumption in 1967 was 160 million pounds.

This situation persisted in 1968, as evidenced by the Canadian Dairy Commission Annual Report for 1968-69 which stated as follows:

"There was a substantial increase in supplies of dry skim milk during the year, resulting in a surplus of over 200 million pounds, which was either purchased by the Commission or for which the Commission provided export assistance. This quantity was approximately double that of two years earlier.

...Since world prices during 1968-69 were well below the Canadian support level... the resale value of Commission stocks for export was well below the Commission's cost...

Skim milk production from April 1, 1968 to March 31, 1969, was 365 million pounds, compared to 319 million pounds in 1967-68 and 270 million in 1966-67."

At the same time, seriously depressed prices on the international market reflected heavy world over-supply. During the fall and winter of 1971 the international market price of skim milk powder advanced above the Canadian support level and, by March 31, 1972, the Canadian Dairy Commission was able to report a zero inventory from total stocks for the year of 108.7 million pounds. The average cost of the 108.7 million pounds, according to the Canadian Dairy Commission, had been 24.2 cents per pound, while the average price realized on sale for export was 20.4 cents.

Beginning in 1972, the situation began to deteriorate again as a result of a falling international price and a rising domestic support price in Canada. Mr. Ellard Powers, Chairman of the Canadian Dairy Commission from 1973 to 1976, stated in evidence that:

"Part of the surplus problem in Canada at that time came about because the supply management system... was not restrictive enough in terms of the maximum amount of milk which could be produced under the system. In 1974 or '75 milk production increased sharply. In fact [it] increased

above the levels required for Canadian consumption which gave us an even greater surplus of skim milk powder" (Transcript, p. 4501).

Certain steps were taken to attempt to deal with the serious Canadian surplus problem. Domestic production was cut by reducing the market share quotas. In addition, in 1975 the Canadian Dairy Commission hired an official to be responsible for export marketing, in the person of Mr. Richard Tudor Price. Prior to that time, export marketing had not been the responsibility of a specific official; it would appear that the Canadian Dairy Commission recognized at that time the need to extend its efforts in the face of tough international competition.

In his testimony, Mr. Tudor Price described the situation that faced him when he joined the Canadian Dairy Commission, and the steps he took to improve it. He said:

"By the time that I joined the CDC in September of 1975 a substantial inventory build-up of skim milk powder had occurred in Canada with the CDC and at the same time a large buildup of inventories had occurred in other countries. The situation at the CDC was that in the period between April and September, 1975 the CDC had purchased 201 million pounds of skim milk powder and sold only 20 million... By the 30th of September the CDC stock had reached 269 million pounds and there were very few immediate sales opportunities in sight. Furthermore, the domestic production of skim milk powder was increasing rapidly and I found that although the CDC had budgeted for purchases of 216 million pounds in that fiscal year it had in fact on a moving year basis already purchased in the latest 12 months to the end of that quarter some 250 million and my projection at that point was that they would purchase in the full year some 290 million; in the event it was 328.....[under the] open-ended offer to purchase program."

Mr. Tudor Price stated that the difficulty in disposing of the surplus was compounded as a result of high prices in the previous year which had the effect of reducing demand on the world market by virtually cutting it in half, in fact. He continued:

"At the same time a similar situation was arising in other countries that production was rising and demand falling both domestically and for export purposes, so that there was really in all of the major producing countries of skim milk powder a major imbalance developing.

During 1975 we had delays on shipments to Mexico at the Mexicans' request and we had also during the period of shortage in the previous years had our share of the Cuban market reduced very substantially."

He stated further:

"... that there was no short-term solution to this problem and that the problem had to be attacked on a worldwide basis by achieving market expansion in any way in which it was possible...[The CDC, through the Trade Commission Service, approached] the countries where we felt that there could be an opportunity to market skim milk powder, either for regular human uses or for new uses, even including stock-feed uses and to see whether we could first of all expand the market in general and, secondly, whether we could take a larger share of Asian markets which were not traditionally ours... During periods of relatively high prices the use of skim milk powder for animal feed is effectively limited to calf-starter and foal rearing but at a certain point skim milk powder does become competitive with alternative products and a much wider range of stock-feed uses and we immediately started to look at the opportunities for market expansion and also for re-entering the Japanese market which Canada had not supplied for a considerable period of time."

As a result of a relaxation in the provisions of the GATT Arrangement in 1976 pertaining to animal feed, there were dramatic increases in international shipments of skim milk powder for animal feed purposes, and stockpiles began to reduce. However, as Mr. Tudor Price pointed out:

"One of the less welcome consequences of this policy was that we were achieving very low returns. In order to take the world market down to levels where we felt that the market could continue to expand and to allow us to compete with other sources of protein and feed stocks we were making extremely low returns on skim milk powder and this led us to look at alternative strategies which would have a long-term effect of reducing the quantities of skim milk powder that were sold to the CDC and which the CDC would have to export and this led us to look into a series of opportunities such as evaporated milk, such as whole milk powder, the export of products which were mixes of skim milk powder and other products and even such products as ultra high temperature treated milk."

The Canadian Dairy Commission was, however, able to report as follows in its 1978 Annual Report:

"The disposal of excess skim milk powder from Canadian Dairy Commission inventories by export sales for animal feed use was completed during the year; improved export demand for skim milk powder for human food use resulted in the Canadian Dairy Commission closing inventory at March 31, 1978 being only 60.9 million pounds compared with 194.8 million pounds at the same date in 1977 and 282.5 million pounds in 1976. All skim milk powder produced in 1977/78 was sold as human grade powder and all stocks as of March 31, 1978 had been committed. Total export sales of skim milk powder were 381.3 million pounds compared with 326.8 million pounds in the previous dairy year."

A word might be said about the general nature of export sales transactions for skim milk powder. A person wishing to purchase, who may be a government agency in a foreign country, will usually prepare specifications of what he wishes to buy in terms of amounts, future delivery dates, bacteria count, age, heat treatment characteristics and so on depending on the particular nature of his need. He will then invite offers from suppliers, based on those specifications, and may also require what is, in effect, an option on some additional supply. For example, he may request 25,000 tons of skim milk powder with a tolerance of 10% on the quantity, so that according to the way in which his requirements actually materialize he may only take 22,500 tons under the contract or may instead insist upon 27,500 tons at the contract price per pound. The bidders usually bid on a price-per-pound basis with the result that, in view of the contract quantities involved, a difference of a few hundredths of a cent per pound on a tender can amount to quite a significant difference for the total contract price. Bidders must also do their best to line up their supplies, and in a case where, for example, 90-day old powder must be delivered at a date four months in the future, the particular powder would not even be in existence when the contract is entered into.

3. *The Export Subsidy*

When the price in a price support program exceeds the international price for a product, in this case skim milk powder, the producer of the powder will not sell on the export market unless he receives a subsidy making up at least the difference between the domestic price and the international price. Likewise, in the event that the producer of the powder elects to sell to the Canadian Dairy Commission under the offer to purchase program at the support price, private exporters will only buy the product from the Canadi-

an Dairy Commission if they receive a sufficient subsidy to permit them to make a satisfactory profit on the export transaction.

Accordingly, it was not realistic to expect that Canadian skim milk powder in any significant volumes would be sold in Mexico in the 1960's until such time as an export subsidy was instituted and raised to the level where Canadian exporters could be competitive. For example, a 6.5¢ per pound subsidy in January 1968, given the Canadian support price of 20¢ per pound, placed a 13.5¢ per pound floor on the price that could be offered by the Canadian private sector on foreign sales. In fact in January 1968 CONASUPO purchased from the United States at a price below 9¢ per pound.

Inasmuch as the Canadian Dairy Commission determines the level of subsidy that applies in each case, it has a substantial influence over export sales regardless of whether the Canadian exporter sources privately or from the Canadian Dairy Commission. As put by Dr. Barry:

There were two forms of financial assistance relating to skim milk powder: either a subsidy on privately-procured or privately-produced product or a selling price of the Canadian Dairy Commission product which would have given the same net cost too, whichever route was taken. In other words, if our support price was 20 cents and we paid an export subsidy of ten cents for privately-produced powder then our powder would be available at ten cents." (Transcript 3773)

In the event that the Canadian Dairy Commission sold skim milk powder from its own stocks directly in an export transaction, it would of course not, even in form, pay itself a subsidy. It would simply absorb the loss and finance it from the revenues it received from the Government through the Agricultural Stabilization Board.

As for whether the prevailing level or levels of export subsidy to private exporters would influence the Canadian Dairy Commission's own pricing, as a matter of general principle, Dr. Barry stated in evidence that the amount of the export subsidy "... would I presume have been the basis for our pricing as well. ... out of a sense of fairness to Canadian exporters" (Transcript p. 3814). (In the only instance disclosed in the evidence when the Canadian Dairy Commission actually bid on a tender call in which the private sector was also interested, which was the January 1968 tender call referred to above, the Canadian Dairy Commission bid a price of 10.24¢, which does not appear to be reconcilable with Dr. Barry's general statement in view of the prevailing support price and export subsidy at the time.)

It appears that an export subsidy for skim milk powder was first established in Canada in late 1964 or in 1965. This was a very low subsidy that was increased to 3¢ per pound subsequently in 1965, was later raised to 5¢ in April 1967, and to 7¢ in September 1967. These subsidy levels were varied from time to time according to what the Canadian Dairy Commission felt was necessary for a satisfactory level of marketing of Canadian skim milk powder, although international marketing conditions did not change so quickly that the general levels of export subsidy were changed more than every few months. As stated by Dr. Barry in evidence:

"On April 17th, of the C.D.C. first year of operation (1967) a policy circular was prepared for the trade. It stated that the Dairy Commission would pay an export subsidy of five cents per pound subject to specified terms and conditions.

"On September 15th, another circular was prepared changing the subsidy to seven cents per pound. Further such circulars were prepared over the years, reflecting changing market conditions."

The general level of export subsidy from time to time reflects in part the difference between the international price and the domestic support price. Subject to the effects of any cartel-like agreements entered into by sellers or buyers, the international price is a free market price resulting from supply and demand conditions. The Canadian domestic support price, on the other hand, is a fixed price subject to periodic government review. For example, it was raised every six months or so throughout the 1970's, as the target support price for industrial milk was raised, so that it increased from 20 cents per pound at the start of the decade to 81 cents per pound as of April 1979.

As indicated above, there were no written guidelines used by the Canadian Dairy Commission with respect to deciding whether a change should be made in the general level of export subsidy and, if so, how much of a change. It was just a judgement that was made from time to time on the basis of all relevant facts as to what subsidy level would be effective.

By 1969, it had apparently become evident that the Mexican demand for skim milk powder, and the potential Canadian sales to Mexico, had assumed such dimensions that it was a particularly important export market for Canadian skim milk powder. Accordingly, the Canadian Dairy Commission established special terms and conditions relating to CONASUPO in particular, which terms were communicated generally to the trade by letter or telex (See documents 325 and 1364 of Exhibit 12 & 12A# for the general telex of February 11, 1969, and documents 479 and 1392 and the same exhibit for the

general communication by letter dated April 24, 1970).

The evidence was clear that although the Canadian Dairy Commission sought to retain maximum flexibility in setting and adjusting its export subsidy from time to time to meet competitive pressures as they materialized, it also made a conscientious effort to ensure that with respect to similar quantities going to the same market at the same time, all Canadian traders or prospective traders would be treated equally. Dr. Barry stated that if the Canadian Dairy Commission was going to adjust the level of subsidy for a particular transaction "the normal procedure was to send notices to the various people that we knew were interested in that particular market, any particular market... That subsidy announcement would have been sent to everybody who got the earlier announcement as to the earlier price." (Transcript pp. 3778-79). A similar point was made by Mr. Tudor-Price in a memorandum prepared for the Commission of Inquiry and marked as Exhibit 165:

"At various times in this period C.D.C. operated different prices and conditions for different countries simultaneously and gave different prices for large volumes than for small volumes to the same market. In March 1977, 10,000 m.t. of animal feed s.m.p. was sold by what amounted to a tender. In some cases C.D.C. normal selling terms of cash before release from warehouse were relaxed and payment against documents accepted.

"Prices were changed extremely frequently to reflect (a) changes in the competitive situation with other s.m.p. exporters (b) changes in competitive product prices particularly the Chicago 44% protein soybean meal price and (c) pressure of inventory and product age on C.D.C. commercial policy.

It would be impractical at this time to retrieve from C.D.C. files all the quotes, price indications, bids, counteroffers etc. made for animal feed s.m.p. by C.D.C. to the trade in the period.

I am not aware however of any situation where C.D.C. departed from the principle of treating Canadian traders equally when pricing similar quantities to the same market at the same time."

It was not as likely that such adjustments would be made with respect to potential transactions with CONASUPO because the special subsidy and conditions of sale applicable to exports to CONASUPO were specially considered and established in each of 1969 and 1970 and announced in advance to the trade.

One fundamental problem arising from the Canadian Dairy Commission's wish to retain maximum flexibility in determining the export subsidy from time to time and with respect to the particular competitive pressures in each case is that it is extremely difficult for any trader who distrusts the officials of the Canadian Dairy Commission to be assured that he is being treated fairly and equally with other exporters. The Canadian Dairy Commission has the power to respond to competitive pressures from abroad with respect to a particular sale possibility. The question may be asked as to why and on what basis the Canadian Dairy Commission should refuse to grant a sufficient subsidy to enable a particular exporter who might be interested in a particular transaction to be successful as against his foreign competitors? This question exists even where the best of good faith obtains among Canadian Dairy Commission officials. The system only operates fairly when the responsible officials are able to blot altogether out of their minds any feelings of antagonism or favouritism they might have towards any particular trader for whatever reason. Plainly, too, such a system is wide open to abuse. It is not a very persuasive justification to a suspicious mind for the Canadian Dairy Commission to assert that its decision as to the appropriate subsidy level was made solely on the basis of "our understanding of market conditions", to use Dr. Barry's words. (Transcript 3768).

Dr. Barry agreed in evidence that, as indicated by document 127, Exhibit 12, in the fall of 1967 the Canadian Dairy Commission essentially offered to the Granby Co-op to increase the export assistance to it to 8¢, for reasons particular to the Granby Co-op. It should be added that apparently nothing came from this proposal to either benefit the Granby Co-op or prejudice any of its competitors.

The ad hoc way in which the Canadian Dairy Commission administered its export subsidy policy, in the name of flexibility, is also illustrated by a telex sent by Mr. Gilles Choquette, Chairman of the Canadian Dairy Commission, to George Schafer on April 22, 1980, a copy of which was supplied by Mr. Choquette to the Commission of Inquiry and marked as an exhibit. In the telex, and in reply to a request by George Schafer for Canadian Dairy Commission "price announcement circulars", Mr. Choquette stated:

"The C.D.C. has not publicly announced the prices for products for export since 1976. It has been the practice of the C.D.C. to indicate prices to the trade in response to specific inquiries. We do this in response to constantly changing market conditions, changing levels of export restitution in the E.E.C., etc., in particular. This practice of not announcing

prices publicly has been of assistance to the Canadian trade: because it makes it more difficult for other countries to know Canadian prices when Canadian traders are bidding against them."

A note should be added regarding the funding of export assistance costs, by which I include the export subsidy and the storage, financing and marketing costs of exporting the surpluses that accumulate under the price support program.

Officials of the Canadian Dairy Commission speak in terms of the costs of export assistance being financed by the producers by means of a special levy made upon them for this purpose.

The levy on producers, which was instituted during the first year of the Canadian Dairy Commission's operation at the rate of 10 cents per hundredweight, began as a pro-rata holdback from the direct producer subsidy that was given by the Federal Government to producers of manufacturing milk and cream. It was not really a "levy" at all except in form and on paper. The producer never saw the money.

When the Interim Comprehensive Milk Marketing Plan and the Market Sharing Quota program were instituted in 1970, and as the provinces joined that program one by one over the next four years, producers in those provinces received the direct producer subsidy without the holdback. A levy to defray costs of disposing of surpluses on export market was and is, however, deducted monthly from the market payments to producers. The amounts so collected are remitted to the Canadian Dairy Commission by the administering provincial milk marketing agency.

When the levy was instituted at the ten cent level in 1966-67, the direct producer subsidy was 85 cents per hundredweight. Although the amount of the levy was adjusted from time to time, it did not change significantly until 1975 when it was raised first to 45 cents and then to 90 cents per hundredweight. The following year it rose to \$1.35. It has since been reduced to \$1.00 per hundredweight (\$2.27 per hectolitre), which is slightly more than one-third of the current direct producer subsidy of \$2.66 per hundredweight (\$6.04 per hectolitre). The levy applies to all within-quota production; there is an additional deduction made with respect to deliveries by particular producers that are in excess of their quotas.

It should also be noted that the "export levy" has not, except on an occasional temporary basis, usually funded the entire cost of export assistance for skim milk powder. Dr. Barry testified that during the fiscal years 1967 to 1972, as a period, the levy covered approximately seventy-five percent of the cost of export assistance for skim milk powder. The other

twenty-five percent was simply paid for by other funds the Canadian Dairy Commission received from the Government.

As of July 1, 1975, ostensibly to even out the large fluctuations in the amount of the export levy that appeared imminent as a result of the drop in the international price, an "Export Equalization Facility" was established. This was in essence a special loan account under which the Canadian Dairy Commission was authorized to average out the export levy over a five year period so as to minimize the impact on producer returns and yet recover export "equalization" costs and interest over the five year period. A forty million dollar cash deficit or surplus was authorized for the Facility for this purpose.

The Export Equalization Facility was not a success. By March 31, 1977, it had a deficit of \$159.7 million. The government decided the taxpayers would absorb the loss, and terminated the experiment. It was then decided, after hearing representations made by the producers, that the liability of producers of manufacturing milk and cream to pay for export assistance would be limited in absolute amount by limiting the amount of the levy. The rest would be made up by a special annual Government contribution and by a levy on fluid milk production.

(C) SCHAFFER BROS. LTD.

In 1925, in Hungary, Mr. David Schaffer and his two brothers, began exporting commodities to various countries. According to Mr. Schaffer, their firm soon became one of the largest privately-owned grain firms in Hungary.

As to his general background and experience David Schaffer stated that in 1919 he worked as a commissioner in merchandising at the Anglo-Hungarian Bank, sold agricultural products and became a member of the Budapest Grain and Stock Exchange. He stated that in 1928 he was elected a member of a Hungarian Legislature, and that in 1930 and 1934 he was elected president of the Hungarian Provincial Exporters Association. He was also elected a Council member of the Budapest Grain and Stock Exchange, which, according to him, was one of the largest such exchanges in the world at that time.

During World War II David Schaffer was interned in a Nazi concentration camp, but he said he was taken out of the camp several times to be consulted about trade matters.

Although World War II interfered with his business, Mr. Schaffer stated that after the War he built up the business once again.

At the end of World War II, he said that he was sent by the Hungarian Government as a one-man

mission to every major city in Europe in order to help to reorganize Hungary's export business.

Mr. Schafer said that he refused to become one of the permanent directors of the Hungarian Government grain and seeds organization because the Hungarian Government nationalized his business in Hungary without any form of compensation. He left Hungary in 1948, abandoning large sums of money, and came to Canada.

Mr. Schafer said that through the business firm he established in Montreal, he began exporting Canadian agricultural products to customers he had served in Europe. He said that in the 1960's he made several business trips to Cuba and Mexico for the purpose of discussing the possibilities of selling Canadian skim milk powder and developing markets for that commodity; that during that period, he met or corresponded with officials of the Cuban purchasing agency (Bancec) and the Mexican agency (CONASUPO); that he also had business relations with PROQUI, a Mexican firm involved in the sales of skim milk powder; that he exchanged information with them regarding their requirements and specifications for skim milk powder and the quality of Canadian skim milk powder; that he kept Canadian government officials (at the Agricultural Stabilization Board and at the Canadian Dairy Commission) informed about his efforts in those countries; that in 1961, Schafer Bros. Ltd. sold 5,500,000 pounds of skim milk powder to Cuba; and that in 1969 Schafer Bros. Ltd. sold and shipped to CONASUPO, without using agents, 770 tons of skim milk powder.

Mr. George Schafer is 42 years old. He said that he had worked in the family business since he was 7, but that he had no formal education in the dairy industry, in the export business or in agriculture. He said that between 1963 and 1967 he spent long periods of time in Europe and Asia, especially Hong Kong, trying to create markets for Schafer Bros. Ltd., but that he did not involve himself in seeking to develop markets in Latin America and specifically in Mexico until 1969.

Mr. David Schafer said that he was the president of Schafer Bros. Ltd. and that his son George and George's wife were the only other directors and shareholders. Schafer Bros. Ltd. is located in the Board of Trade Building, 300 St. Sacrement Street, Montreal, Province of Quebec.

Mr. David Schafer said that he and his son George owned certain other inactive family companies and also St. Lawrence Seeds Ltd. St. Lawrence Seeds Ltd. was mainly involved in the export and import of seeds and cotton and, according to Mr. George Schafer, had exported seeds to European countries and imported raw cotton from Mexico, acting as agents for Mexican companies.

Mr. David Schafer said that while St. Lawrence Seeds Ltd. sometimes made a small profit, Schafer Bros. Ltd. has not made a profit for the last 15 years.

Mr. David Schafer had two basic concepts of or relating to the rights of Schafer Bros. Ltd. to the CONASUPO market for Canadian skim milk powder:

1. In his view the Canadian Dairy Commission had been created not to compete with private traders, but that one of its functions was to help them to export Canadian surpluses "for the benefit of Canada";
2. Since, in his belief, Schafer Bros. Ltd. had alone created the CONASUPO market, he claimed it had an exclusive and monopolistic right to sell to CONASUPO Canadian skim milk powder for as long as it wished to do so.

These two basic concepts of David Schafer, and also of George Schafer, are illustrated by the following few excerpts from some of their letters. On February 19, 1969, George Schafer wrote to the Honourable H.A. Olson, then Minister of Agriculture (Exhibit 12, p. 332) stating:

"... it is up to the C.D.C. to facilitate the business in every way possible!!! The C.D.C. should not try to be an export sales organization but try to do the best possible job as a service organization."

And on May 5, 1969 (Exhibit 12, p. 389):

"We understand that this year again the C.D.C. is bidding direct in competition with us. This is not the function of the C.D.C."

In a letter to Mr. George C. Lachance, M.P., dated February 10, 1971 (Exhibit 12, p. 532), David Schafer said:

"In our opinion, an Agency of the government whose employees are paid from the taxes on private business, should not be allowed to take away private business. Their job is to provide accurate information and possibly regulate the market but NOT to transact business.

"Canada NEEDS its entrepreneur exporters who create new markets for the country. The government should not allow them to be exterminated."

David Schafer, in a letter to the Honourable H.A. Olson, dated May 17, 1971 (Exhibit 12, pp. 598, 600-01) wrote:

"JUSTIFICATION & POLICY. How can a Liberal government justify the further expansion into the export sales field of a State

Enterprise such as the Canadian Dairy Commission, depriving private firms of their livelihood? This is the case when the Dairy Commission takes away Mexico as it had done with Cuba (our firm's two principal customers) making government to government sales. In my opinion, under a Liberal government, state enterprise must refuse to enter into business negotiations, and categorically tell the interested buyer that he must deal with private concerns. The state organization should be there to regulate the market, and assist the exporter in every possible way, including credit and performance guarantees, market information, etc."

"RECOMMENDATIONS. In order to help Canada achieve economic independence, it must give every possible assistance to EXPORTS and to its QUALIFIED EXPORTERS, to build a group of Canadian citizen exporters (including Agents and Brokers) serving exclusively the Canadian interest. Including, but without limitation by enumeration: Incentives and Commissions must honour their work, along with all facilities they require, much better coordination for using combination deals as leverage and more flexible trading and services. As regards to the Canadian Dairy Commission, we would suggest the following. IT should

- a. regulate the market
- b. be deprived of all export sales powers
- c. provide export financing, (or financing and performance guarantees) wherever necessary
- d. provide world production, market, and price INFORMATION to EXPORTERS."

On December 16, 1971 (Exhibit 12, p. 675) David Schafer wrote to the Honourable H.A. Olson as follows:

"... tell us if you don't agree that it is fair, equitable, in the national (EXPORT SALES STRENGTH) interest, and in the realm of possibility:

1. that we receive a reasonable normal commission of 2% after all the milk powder the CDC sold direct to CONASUPO, Mexico
2. the Canadian Dairy Commission be prohibited to enter into any export sales agreement
3. that the CDC's activities be restricted to regulate the market and to ASSISTING private exporters through providing information

on world production, prices, and market conditions as well as to meet foreign requirements, export credit, etc. (together with EDC at competitive rates tolerable for low markup agricultural commodities)."

With respect to their concept that Schafer Bros. Ltd. should have monopolistic control of the skim milk powder market between CONASUPO and Canada for as long as Canadian skim milk powder was being sold to CONASUPO, or until such time as Schafer Bros. Ltd. informed the Canadian Dairy Commission that it was no longer interested in that business, George Schafer had the following exchange:

"George Schafer: Schafer Bros., in the case of Mexico, should have had the support of the Canadian Dairy Commission, to continue to do the business which it had informed the Canadian Dairy Commission it was trying to get, which it did get and it was continuing to pursue. In this case after having worked for a long time, I believe that Schafer Bros. should have had the support of the Canadian Dairy Commission to do...

Q. Should it have had a monopolistic interest in the Mexican market?

A. Not necessarily a monopolistic interest with all the Mexican market, but with CONASUPO yes.

Q. It should have had a monopolistic interest in?

A. With that one customer.

Q. For how long?

A. For as long as the business was going on. For as long as Canada was doing business or for as long or until such time as Schafer Bros. Ltd. informed the Canadian Dairy Commission that it was no longer interested in pursuing business.

THE CHAIRMAN: Why?

George Schafer: This is the way we would have operated with our —

THE CHAIRMAN: But why should they have that monopolistic control of that market? Why should Schafer Bros. for evermore or until they decided they did not want it. Why?

George Schafer: This is the way I have been brought up to think. My father who has been in- a member of the Arbitration Council of the Budapest Grain & Stock Exchange would have brought this kind of a ruling in an arbitration case. He has brought me up in this belief. . . (transcript pp. 2349-51)

Mr. David Schafer, after having read the evidence given by his son regarding this concept, said that he agreed with the statements made by George, but not with the conclusions. David Schafer's conclusion was that Schafer Bros. Ltd. should be paid a 3% commission, as compensation, on all Canadian skim milk powder sales to CONASUPO from 1968 until now. He said he based the percentage figure on the particular commission paid to Ault Foods (1975) Ltd. under its August 1977 contract with the Canadian Dairy Commission. David Schafer also said that from now on the CONASUPO business in Canadian skim milk powder should be split among Schafer Bros. Ltd. and the firms which were in that market in, or prior to, 1968, or which had sold Canadian skim milk powder to CONASUPO directly or through Mexican agents, namely: Ronald A. Chisholm Ltd., Eastern Townships Produce Ltd. and maybe Granby Co-op.

Essentially the views of both David Schafer and George Schafer which appears from their oral evidence and their correspondence is that once Schafer Bros. Ltd. has attracted a customer, it is entitled to have the customer deal exclusively with Schafer Bros. Ltd., which is entitled to be shielded from competition.

Although their views displayed some divergence — in that George Schafer demanded a monopoly of trade between the Canadian Dairy Commission and CONASUPO “as long as Schafer Bros. wishes to continue in that market”, whereas David Schafer was prepared to share the trade in Canadian skim milk powder with CONASUPO with those other traders who participated in this market in the 1960's (in other words an exclusive oligopoly), the difference is one of degree and not of principle.

There is nothing novel in such views; indeed, they reflect the ancient guild tradition built up through thousands of years, reaching its most comprehensive expression in the restrictive mercantilist policy of France in the 18th century. The guilds which were organizations for the defense of the trade interests of those who belonged to them, adopted regulations for the conduct of business transactions and to suppress competition.

The guild had a policy to reduce, if it could not eliminate, competition and to protect its members against entry by third parties to its markets, trades and professions.

It is interesting to compare the concepts of the Schafers with various rules of conduct adopted by guilds:

“Again, it was forbidden to monopolize customers, to invite into your own shop the people who had stopped before a neighbour's display of goods, to call in the passers-by, or to send a piece of cloth on approbation to a

customer's house. All individual advertisement was looked on as tending to the detriment of others. The Florentine innkeeper who gave wine or food to a stranger with the object of attracting him to his hostelry was liable to fine. Equally open to punishment was the merchant who obtained possession of another man's shop by offering the landlord a higher rent. Any bonus offered to a buyer was considered an unlawful and dishonest bait.”

Georges Renard, *Guilds in the Middle Ages* (London: G. Sell and Sons Ltd.) p. 42.

“In the market ‘good form’ must be observed between members of the same gild. One member must not intrude before a sale is consummated. ‘If anyone is in front of the stall or window of a cook to buy or bargain with the said cook, and if any of the other cooks call him before he has left the stall or window of his own will,’ the fine would be 5 sous.”

F.B. Millett, *Craft Guilds of the Thirteenth Century* (Kingston: The Jackson Press, 1915).

“The real regulation of competitive practices during the early part of the middle ages was by the guilds themselves. Trade was largely localized in towns. The guilds dominated the trade and the usual lack of a strong central government made these organizations very powerful within their own towns. Guild regulations prohibited various methods of competition and imposed fines and other severe penalties for their violation. The enticement of employees was prohibited by many guilds. The plumbers in London in 1365 provided that ‘no one of the said trade shall oust another from his work undertaken or begun’. Interference with a competitor while making a sale to a customer or disparagement of a competitor's goods were likewise condemned. For example, the Merchant Adventurers of Newcastle-upon-Tyne in 1669 enacted the following ordinance:

“... it is ordered &c. That noe brother or sister shall, either by themselves, their servants, or anie other person whatsoever, call too, or invite anie person, either by word or anie signe, to come to their shoppes or sellars, while such person is either speaking with another of this Fellowship or his servants, against their owne shoppes, sellar, or houses, or going with them to shew them anie commodity, or be present with them or anie of them; but shall dilligently attende their cus-

tomers, coming to their owne shopps and sellars. And that in their selling they shall not undervalue or disgrace their neighbours goods, but leaving every chapman to his owne discretion in buying the goods he is to buy, and hath presented to him. Upon paine that every brother or sister soe offending shall forfeite, for the first offence, twenty shillings, for the second forty shillings, and for the third five pounds.”

Jones, Franklin D.,” *Historical Development of the Law of Business Competition*”, (1926-27) 36 *Yale L.J.* 351 at 368-69.

“Their ordinances were framed for the ‘better relief and comoditie of the poorer sorte’. No Guild-associate was to entice away a brother’s customers nor a brother’s servant.”

English Guilds, Edited with notes by Toulmin Smith, (London: N. Trubner & Co., 1870) p. cxxxi

“The ambitious aim of the ordinances, according to the *Book*, was to ensure ‘that the human race may be governed fittingly and no person may injure his fellow.’ There was a high degree of division of labor, and each man must keep within his own bounds. The weaver could not be a merchant, the spinner could sell only yarn. Victualers must not encroach on the preserves of the perfumer, soapmaker, linen merchant, tavern keeper, or butcher ‘even in the slightest degree,’ under pain of the customary flogging, shearing of locks and beard, loss of goods, and banishment.” (p. 198)

“While seeking to protect its members against outsiders, the guild protected them against each other. Unfair competitive methods were forbidden.” (p. 201)

“**Craft Guild Policies.** Guild ordinances touched the guildsman’s relations with fellow members, non-members, members of other guilds, future members, dependent workers, and consumers. The spirit that animated them was one of comprehensive protectiveness; the group was to be protected from competition or injury by outsiders, the individual member was to be protected from the destructive, unfair, or fraudulent competition of his brethren, while both he and the consumer were to be protected from defective workmanship and poor or dishonest products.” (p. 203)

“Many ordinances sought to secure fair play and equal competitive conditions between rivals. Masters must not try to steal one another’s workmen or customers or strive to gain an advantage in securing raw materials. Goods must not be hawked through the streets, but be offered only in shop or market. At St. Omer the seller was forbidden to attract attention by blowing his nose or sneezing when customers were

around. The boatman bringing beer to Bruges must not display any signboards singing the praises of his cargo. The professional ethics of medical and legal practitioners are a survival (or revival) of these rules against blatant solicitation or advertisement.” (p. 207)

“How far guild opposition actually retarded technical advances we cannot say, but the attitude certainly was cautious and suspicious. The ideal was ‘stability of conditions in a stable industrial organization’ (Pirenne), ‘order rather than progress, stability rather than expansion’ (Lipson). Free competition, if such an idea was conceived, seemed to be a dangerous disruptive notion, the enemy of the existing order.” (p. 207-8) Heaton, Herbert, *Economic History of Europe* (New York: Harper & Brothers)

From these references it should be noted at this point, before reviewing the evidence concerning the objects and purposes of the Canadian Dairy Commission and concerning the allegations and issues, that the Schafers’ concepts of the role of the Canadian Dairy Commission and of competition in the market are not in accord with Canadian public policies.

(D) CONASUPO (MEXICO)

As stated, *Compania Nacional de Subsistencias Populares* (“CONASUPO”) is the sole and exclusive authority for importing skim milk powder into Mexico. At least in the late 1960’s, large purchase orders placed by CONASUPO, and the selection of the vendor, were done at the senior levels. Smaller orders apparently were handled at the level of the Purchasing Department. For the big orders, however, everyone on the register was invited to submit a tender. The Director General made all the final decisions with respect to the larger orders where price appears to have been the major factor in selecting the vendor. Confidence in the performance capability and reliability of the supplier was also taken into account in some manner.

Mexico elects a new President every six years. Apparently, although there is one dominant political party, with the election of a new President there is usually an extensive change-over and shift in senior and decision-making personnel and administrators, because that is the prerogative of the new President. The new administration takes office at the end of the year in which the presidential election is held. This frequent change-over of government personnel affects CONASUPO as well, so that several new key people, including the Director General, changed as of 1965, 1971 and 1977. These dates may have some significance to this Inquiry, as certain important events occurred at those times, i.e.:

1965 — David Schafer first met CONASUPO officials, introduced by Mr. Rocchi;

1971 — (a) Messrs. Rodriguez Ayala and Rodriguez Licea and the Director General, whom David Schafer knew, left CONASUPO;

(b) CONASUPO entered into an exclusive buying arrangement with the Canadian Dairy Commission with respect to Canada. (This was part of an overall policy of the Mexican government, which also extended to a number of other products).

1977 — The Canadian Dairy Commission decided it needed an agent for its business with CONASUPO.

Mexican demand for skim milk powder began to escalate in 1968. By 1973, Mexico was importing over 41 million pounds of skim milk powder annually, and in 1980, the annual demand is approximately 90 million pounds.

(E) PHILIPPINES, ALGERIA, PERU AND CHILE

Schafer Bros. Ltd. does not make any claim for compensation regarding the matters raised in the allegations concerning the Philippines, but made those allegations to seek to demonstrate the Canadian Dairy Commission's lack of cooperation and attitude towards the Schafers, and to seek to demonstrate that the Canadian Dairy Commission should be more aggressive in assisting export sales of Canadian skim milk powder.

As for Peru, Chile and Algeria, the matters raised in the allegations, either by their nature or by the circumstances surrounding them, have little significance and were made in order to raise questions which Schafer Bros. Ltd. felt should be answered regarding the extent of the Canadian Dairy Commission's willingness to cooperate with Schafer Bros. Ltd.

CHAPTER IV

EVIDENCE CONCERNING THE OBJECTS AND POLICIES OF THE CANADIAN DAIRY COMMISSION

Two basic objects are set by Parliament for the Canadian Dairy Commission in Section 8 of the *Canadian Dairy Commission Act*. The first object of the Commission is “to provide efficient producers of milk and cream with the opportunity of obtaining a fair return for their labour and investment”. The second object of the Commission is “to provide consumers of dairy products with a continuous and adequate supply of dairy products of high quality.”

The only directive given by Parliament as to the manner in which the Commission must carry out its functions are that the Commission shall carry out its functions under the Act in a manner that will achieve its objects and meet its obligations from the monies available to it under the *Canadian Dairy Commission Act*.

It should be noted that Section 8 of the *Canadian Dairy Commission Act* is directed to provide for efficient producers of milk and cream and to provide for consumers of dairy products. It is not directed to all producers, nor is it directed to processors, to private traders or to any other persons.

Because the Order-in-Council directed, *inter alia*, that there be an Inquiry into whether or not the Canadian Dairy Commission, its officers and employees acted lawfully and fairly (in one aspect of the meaning of that word) in respect of certain of its commercial practices, it has been necessary to consider the meaning of Section 8 and to hear evidence as to the manner in which the Canadian Dairy Commission by its policies has sought to implement the objects of the Commission as laid down by Parliament in Section 8.

Any body created by Statute may only exercise the powers conferred upon it by or pursuant to the enabling statute or any other relevant statute. In addition, those powers are only lawfully exercised if they are exercised in order to implement the purposes for which the body was created (see *Re Doctors Hospital and Minister of Health et al* (1976), 12 O.R. (2d) 164 at 174-176; and *The Agricultural Stabilization Board v. Jacobs Farms Limited et al* (Federal Court of Appeal, File A-432-79, April 25 1980 unreported).

It was therefore important that evidence be adduced in respect to these matters. This was made

especially apparent because of the fact that one of the principal threads underlying and running through most of the evidence adduced before the Commission was the question of the process for holding the Canadian Dairy Commission accountable for the exercise of its very considerable powers. Perhaps this Inquiry would not have been necessary had an adequate system existed for measuring and checking all aspects of the performance of the Canadian Dairy Commission.

Directed to determining the issues of lawfully and fairly, evidence was given at the Inquiry by Dr. Lawrence Skeoch, by Dr. S.C. Barry, Chairman of the Canadian Dairy Commission from 1966-1973, and by R.M. Cloutier, Director of the Economic Study Section of the Canadian Dairy Commission. The remainder of this Chapter sets out their evidence.

The legal implications are considered in Chapter VII.

Evidence of Dr. Lawrence A. Skeoch

Dr. Skeoch was not asked to undertake any special study of the Canadian Dairy Commission or of any particular allegations made by Schafer Bros. Ltd. Instead, because of his background as a senior Canadian economist of very considerable stature, particularly in the fields of agriculture and industrial organization, he was asked to give opinion evidence regarding the policies of the Canadian Dairy Commission in carrying out the intent and meaning of Section 8 of the *Canadian Dairy Commission Act*, whether such policies were in fact carrying out the intent of Parliament when Parliament enacted the section, and whether or not such intent could not be better implemented by different policies.

It is convenient, if somewhat arbitrary, to summarize Dr. Skeoch's evidence first under seven headings: general comments, “efficient producers”, “fair return”, “adequate supply”, cost justification, price support programs, and general proposals; and second, regarding matters of accountability for the adequacy of policy and programs.

1. General Comments

The fundamental concern that Dr. Skeoch stated he had in the field of public policy, including that relating to agriculture, is that measures be adopted that preserve or maximize the long run flexibility and adaptability of an industry, and its ability to change over the long run to take account of new technological and organizational developments. In his words “economic progress depends, as much as on any other factor, on the energy, inventiveness and creative imagination of particular men, attributes which are more likely to be developed and maintained by opportunities for independent action and the relatively

unconfined exercise of initiative. The consequences of excessive centralization [i.e. of decision-making power] may be more serious in the long run than in the short run."

It is this perspective that leads Dr. Skeoch to the view that concepts such as "efficient production", "fair return", and "adequate supply" are essentially long run in nature and are incapable of meaningful definition apart from a market context. To him they implicitly impose some requirement of market effectiveness. Dr. Skeoch stated that there was no way that one could tell whether producers or others were operating efficiently, or whether the prices were fair, or whether the output was adequate except by a relationship to market pressures and market criteria. In the absence of such criteria, one's judgments could be nothing but arbitrary or political.

As to the general utility of preserving as much of an open market economy as is compatible with other statutory objectives, Dr. Skeoch stated:

"The unavoidable reality is that outside an effective dynamic market economy, our society has no way to deter or penalize the wasteful use of resources, to compel technological innovation, or to direct production toward the satisfaction of consumer wants. Indeed, without competitive challenge, or the threat of such challenge, we cannot even measure waste, inefficiency, or technological stagnation."

In Dr. Skeoch's view one of the great long-run advantages of maximizing market forces, so far as these may be compatible with the statutory objectives, is that one thereby maximizes the economic usefulness of prices to signal the relative scarcity of different resources and commodities, and to serve as indicators of change in demand, supply and technological conditions. The price system in the market economy cannot be duplicated by a centrally controlled, administered system. It is the key to the incomparable ability of a market economy to transmit and utilize information. In Dr. Skeoch's words, "the market-induced search by thousands of individual minds for maximum efficiency, for opportunities for experimentation and innovation, creates a productive and optimizing effect of great force".

The great danger of administrative intervention in an industry, said Dr. Skeoch, is that it will not be a tool for adjustment but instead will turn out to be a device for supporting an existing system of production and existing cost-price relationships:

"The forces of economic progress are not self-perpetuating but tend to come to rest through the entrenchment of existing interests. The search for stability too often becomes a search for pseudo-security, secu-

rity, that is, that is based on the inhibition of change, and the avoidance of dynamic change. The fact that these considerations are incapable of precise quantification is no reason for doubting their basic importance."

It is, of course, unfortunate if the response to the short-run problem, in agriculture or anywhere else, takes the form of defending the status quo through the entrenchment of existing interests. Dr. Skeoch's overall assessment of government policy with respect to agriculture was expressed as follows:

"Government policy with respect to agriculture appears. . . to assume that the time-scale is unimportant, that innovation and dynamic change can be largely left to take care of themselves, and that its major focus should be limited to achieving some defensible level of 'government guaranteed profitability'."

Dr. Skeoch was generally critical of government price support programs, for the reason that by masking market signals they may inhibit continuous improvements in efficiency at substantial economic cost to taxpayers, and in particular to farmers and consumers over the long run. Dr. Skeoch generally took a dim view of comprehensive supply management schemes, while at the same time being of opinion that some intervention by government was essential in the case of agriculture, especially in the dairy industry sector of it. He felt that it was an exercise in self-deception to seek to control "market information" by imposing production quotas, by arbitrary allocation devices, and "by deriving prices from a cost-justification base frequently determined by formula rather than from the pressure of market forces..." He put it this way:

"Since thorough-going market controls create their own market 'information' by allocative decisions which severely limit the scope for individual producers and sellers to respond to the imposed market signals, there is a tendency for the planning authority to consider the result as representing an equilibrium situation, and any departure from it as representing 'instability'."

This problem of distorted market information is even more acute in a case where one person, such as the Canadian Dairy Commission, whether by virtue of the Government price support program and export subsidies, or otherwise, has such a large degree of power on both the buying and the selling sides of the market as to be substantially insulated from market pressures. The Canadian Dairy Commission being such a person can in large part settle both the supply and the demand sides of the equation, so that there is no standard for the measurement of efficiency, fairness or adequacy of anything. The limitations imposed upon production and entry create artificial

value attaching to the (quota) restrictions, with "consequences for the movement of resources, for investment valuation, and for producer management initiative that are difficult to quantify and appraise".

2. "Efficient Producers"

Dr. Skeoch testified that it was extremely important that consumer prices should be at the lowest level attainable. He further stated that consumers and producers of food require, in their own best interest, maximum efficiency of production in both the short and the long term, together with minimization of the costs of processing and marketing.

"Efficiency" to Dr. Skeoch is a word that can only be given substantive content in long-run terms of openness of an industry to market pressures and to change. As he put it:

"Efficiency is one of those words that everybody believes in until he has to adjust in order to make some contribution to it. The difficulty with efficiency is of course, that efficiency is a forward looking concept. It is not a static concept. It isn't a matter of static allocation of facts. It has very important dynamic dimensions..."

Dr. Skeoch, far from taking the view that he or anyone else could predict change or effectively utilize all relevant market information, said that nobody could possibly know what is going to be "efficient" five years from now in static terms. He was very firm in his view, however, that if the ends tend to be short-run, then there must inevitably be a conflict between the "efficiency" goal and the ends, "because you cannot talk of an efficient industry simply in terms of short-run results. You have to look to whether the industry is flexible and adaptable..." Production control, for example in Dr. Skeoch's view inevitably conflicts with the goal of "efficiency".

Dr. Skeoch did make clear that his comments regarding efficiency were not to be taken as any endorsement of the private sector over the public sector. He stated that there was no basis for assuming that the private sector was more effective than the public sector in achieving long-run efficiency. The difficulty, however, was that the private sector is generally forced to change and adapt according to market pressures, whereas the greatest care must be taken to ensure that proper incentives and opportunities for change exist in the public sector to the extent that it is insulated from the market pressures.

In answer to a question by counsel for Schafer Bros. Ltd. Dr. Skeoch expressly repudiated any suggestion that it would in some way be inefficient for a marketing board such as the Canadian Dairy Commission to compete with exporters to whom it sells product. In his words: "Competition is competi-

tion and it shouldn't be soft competition. Soft competition is not really what we are trying to get..."

3. "Fair Return"

"Fair return", like "efficient production", is a concept which, in Dr. Skeoch's view, is essentially long-run in nature and incapable of meaningful definition apart from a market context. It is something that can only be defined in terms of alternatives, and whether the market would actually yield that sort of return. In his words:

"The fair return is the long-run return that you can earn in a reasonably competitive market. It is nothing more than that and there is no other way to give it economic content. You may be able to give it other types of content but you can't give it economic content in any other way of defining it."

4. "Adequate Supply"

"Adequate supply" is a long-run, market-oriented concept for the same reason as are the concepts of "efficient producers" and "fair return".

Dr. Skeoch testified that if production restrictions are imposed, consumer preferences cannot possibly be effectively registered: "There is no way you can register a preference for something that you are not presented with. You have to have an alternative..."

Dr. Skeoch was asked certain questions relating to statistics outlined in Exhibit 145, which was a Canadian Dairy Commission pamphlet entitled "The National Dairy Program, 1979-1980". Apart from observing that the decline in Canadian requirements for industrial milk during the 1970's was understated by the Canadian Dairy Commission pamphlet, in the sense that by ignoring the population increase it only reflected about one half of the actual decline in per capita consumption, Dr. Skeoch testified that the reasons for the steady decline of per capita consumption of industrial milk in Canada might not have been fully explored by the Canadian Dairy Commission:

"There is also the other possibility, and you can't rule it out, and that is that there was a very substantial increase in price. The normal response to an increase in price is of course a decline in consumption. You can't say that a decline in consumption was not in any sense due to an increase in price since a reduction in price was not tried so far as I am aware."

Dr. Skeoch put the same proposition elsewhere in his evidence as follows, on cross-examination by counsel for the Canadian Dairy Commission:

"You can always get an adequate supply by putting the price so high that very few people want to buy. An adequate supply has no

meaning without reference to price. It is just a meaningless concept. You can say, well, if I am charged \$10.00 a dozen for oranges there will be very few oranges consumed and that would be an adequate supply of oranges. If you look at the production, the production now, a decline of 22% or more in industrial milk over a period of — that relatively short time — it would at least give you a *prima facie*, raise a *prima facie* question as to whether an adequate supply was provided. It doesn't prove it but it does raise a *prima facie* question."

And elsewhere:

"What is an adequate supply depends upon the price you fix, you see. You can always get an adequate supply. If you are going to charge \$2.00 a pound then, an adequate supply would be one amount. If the price were going to be \$1.00 a pound, an adequate supply would have been altogether different, so there is no formula that you can simply adopt to say, 'This is an adequate supply because we fixed the price at such and such a level and this amount is taken at that price.' The question is: Is that price a reasonably competitive price? Is that price arrived at by pressures of the market and by incentives to invest and so on? Otherwise, you are simply saying, 'Well, the supply always equals demand.' You know that is one of those irrelevancies that some ponderous people tell us. Supply and demand determine price. They look as if they had said something. The question is: What determines supply and what determines demand? If you have an international cartel, they can make supply and demand equal. Supply and demand will determine price quite easily. They just control the supply and it is a relatively simple matter so there is no way that you can determine what is an adequate supply and so on apart from such market tests. . . . Once you depart from that sort of test you are simply saying, 'Well, we fixed the price at so and so and so much butter or so much cheese or so many tires or so many gallons of gasoline were taken at that price', and that's obvious but that is not what we mean in economics by efficient production, by an adequate supply or by a fair price."

In answers to further questions addressed to him by counsel for the Canadian Dairy Commission, Dr. Skeoch observed that if one were going to restrict output in the first place, it could virtually be assumed that the controlled output would not be adequate in the sense that producers would be willing to provide

more to the consumer at that price than they are permitted to provide. The existence of production controls, in other words, creates a *prima facie* case of inadequacy.

5. "Cost Justification"

The use of retrospective and static cost justification formulae is an aspect of the broader question of "fair return" with respect to which Dr. Skeoch was highly critical. In his view such a basis for prices and returns was incompatible with the limitation of the statutory goal to "efficient" producers.

The basis of Dr. Skeoch's criticism is reflected in a quotation which he adopted from the writings of an authority in the field:

"Among the most popular of the notions about fairness and pricing is the idea that a seller is entitled to a price which will cover his cost plus a reasonable profit. Few propositions gain readier acceptance particularly among persons supposedly sophisticated among business matters. It seems reasonable that a fair price should reflect the cost of production, that no one should be required to do business at a loss, that everyone should receive suitable compensation for his efforts. The weakness of the argument, often surprisingly obscure, lies in the fact that what it costs to do a job is not necessarily related to what it is worth to have it done. Yet, despite its unsoundness, the argument is widely employed and surprisingly persuasive. Sellers explain their costs must be raised because their costs have gone up. So often the explanation is patently absurd. Most utility regulation embraces the theory that cost must be reflected in prices. Legislatures are readily persuaded that price controls must not compel sales below cost. It is extremely dangerous to assume that the existence of a cost justifies the establishment of a price. What encouragement would there be for efficiency and economy if every excess cost could and should be readily passed on to the buyer? The deplorable condition of the whole building industry presents striking evidence of the exploitation which might become general if all groups in a community were permitted to practice extortion (as he puts it) through make work, output restriction and other cost maximizing devices applied with sanction by the public and the constituted authority."

A short-run cost justification approach, according to Dr. Skeoch, effectively denies a role for demand in the setting of prices. It weakens the forces working for the introduction of new technology and new forms of business organization over time, insulates people

from market pressures and is inconsistent with the fundamental principles of long-run dynamic change. In reality it provides no protection to the producers who are or can be efficient and effective in the longer run.

As to price support programs, Dr. Skeoch pointed out that they typically require production controls, and benefits to farmers become capitalized into the cost structure, usually through the factor with the more inelastic supply (e.g. land). Entry by new producers or expansion by producers already in the industry becomes more difficult and prices do not perform their proper signalling function.

In the longer run the combination of cost-justification pricing and quota controls results in substantial windfall gains to the "first generation" holders of quotas, which discourages entry and creates an upward ratchet effect on "costs" as the quota holders attempt to amortize their investment and, if at all possible, to emulate their predecessors in enhancing quota valuations.

In summary, it was Dr. Skeoch's view that it was absolutely essential, if one wished to maintain the flexibility and adaptability that is necessary in an economy that will achieve the objectives set out in Section 8 of the *Canadian Dairy Commission Act*, that a retrospective cost justification formula not be adopted or utilized.

6. Price Support Programs

Dr. Skeoch's general views regarding price support programs have already been referred to. In essence, Dr. Skeoch testified that price support programs obscure market signals and over the long run they may inhibit continuous improvements in efficiency at substantial economic cost. He felt that they relieved the distributors and processors from essential market pressures, and, in general, "that the public in the sense of consumer plus taxpayer... is always better off" with a direct subsidy to producers instead of a price support program.

I take Dr. Skeoch's view as applying equally to the extent that a price support program might supplement a direct subsidy to producers, as is in fact the case with the Canadian Dairy Commission.

Dr. Skeoch referred to a price support program as "a high price line" in that supports are fixed for processed products that are traded internationally, such as butter, cheese and skim milk powder, with the home market prices being kept above world prices by means of protection at the border. This protection at the border applies to the processed products and not to the raw material such as, in this case, the producer's milk. What Dr. Skeoch referred to as the "low price line" policy, or in other words the direct subsidy

to the producers, involved domestic acceptance of world market prices, with the price seeking its own competitive level in the market. With the low price line, farmers would be given subsidies on products produced by them in order to bring their incomes up to the level that was determined by government to be socially acceptable.

Dr. Skeoch testified that the high price line, or price support programs, had the disadvantage of extending the shelter from competition beyond agricultural production to the food processing and distributing industries, thereby lessening the pressure on the processing and distributing sectors of the industry to reduce their costs. Price support programs therefore, over the long run, tend naturally to interfere with the achievement of real cost economies or higher levels of efficiency throughout the relevant part of the agricultural industry.

With the low price line (which involves direct subsidies to the producer) a producer is free to adjust his output from time to time as he sees fit. In Dr. Skeoch's view the reason why the high price line is so popular is because it is easier politically, in that it serves to diffuse and disguise the amount of the real subsidy being given to producers. I understood that Dr. Skeoch would have no objection to this per se if it did not have the other adverse implications that he identified.

7. General Proposals

Dr. Skeoch stated that it was of fundamental importance that the means not conflict with the ends. In his view, about all one can do as a practical matter is to question whether there are not less interventionist and less restrictive practices which can be used to achieve a higher level of market effectiveness, particularly in the long run, and at the same time achieve the broad objects of the Canadian Dairy Commission Act as set out in Section 8. Dr. Skeoch would seek to introduce incentives and pressures to adapt, and to discontinue the use of any "direct-and-control" methods that might be used to support a form of security based on the inhibition of change.

In general, Dr. Skeoch said that the search should be for more simplified tools where you use decentralized market decision processes and then supplement them by other measures to establish reasonable stability in the market.

Dr. Skeoch did not in any sense suggest that the problem was an easy one, or that any failings by the Canadian Dairy Commission were somehow unique to it. It was in fact an extremely intractable problem requiring a sophisticated long-term perspective. Further, Dr. Skeoch said there was no painless formula or technique that would solve the problems of agricultural adjustment. The fact that the solutions were not

simple or clear-cut, however, did not lessen the fundamental importance of the long run perspective and the longer run programs that attempt to facilitate adjustment and change.

In Dr. Skeoch's view, as difficult and as complex as it might be to introduce a longer-run perspective into the regulation of Canadian agriculture, it would be less complicated than the existing policy programs in terms of figuring out their long-term consequences.

Dr. Skeoch was of opinion that agricultural policy must draw a balance between facilitating dynamic change and achieving a socially desired level of stability. Some sort of assistance to producers to reduce the short-run effects of severe fluctuations would be necessary. In fact he stated that for too long the agricultural sector of the economy at the producer level had been the forgotten sector, and had been left to take all the buffets of international fluctuations. It would cost something to build in an element of security for the producers, but that cost would be a good deal less than the loss which would and did heretofore occur to producers by leaving the producers to cope with unrestrained market forces.

By way of general critique of the policies of the Canadian Dairy Commission, Dr. Skeoch felt that it was clear that the objectives of Section 8 could be achieved with a much lower and less comprehensive level of intervention than has in fact been employed. In particular, he felt that the quota control and price support programs, and the cost-justification-based formula utilized by the Commission, were in "serious conflict" with the requirements of Section 8.

Dr. Skeoch therefore was of opinion that there is a need for government intervention in the Canadian dairy industry. This need results from the fact that there are a large number of producers, that the planning and production period is long, that there is a very substantial fluctuation in the cost side, and that on the production side, producers and sellers are frequently faced with an inelastic short-run demand on the part of buyers, with the result that there is a considerable likelihood of extreme price fluctuations. In such circumstances the individual can do relatively little to protect himself, and government intervention is required to eliminate the wasteful and inefficient effect of the extreme short-term fluctuations upon productive capacity, and on the ability of producers to perform effectively. Short-run stability, however, must not be achieved by methods that result in an inefficient industry from the longer run point of view.

In Dr. Skeoch's view it was not that the producers have lost the willingness to take risks and to adjust, but that the cost of change today is sometimes too great for the individual producer to bear unassisted. This is the source of the obligation upon the government to assist the producer in accommodating

change. The "trick" is to make this accommodation while in the longer run ensuring and preserving incentives and pressures.

In summary therefore Dr. Skeoch was of opinion that despite the nebulous formulation of the Canadian Dairy Commission's purposes and objects, the economic implications of its activities are considerable, particularly for consumers, for taxpayers and for producers. He was of opinion that it is imperative for bodies such as the Canadian Dairy Commission to have sophisticated and tough-minded policy leadership that will seek to maximize the play of market forces, to decentralize decision-making and to minimize the extent of centralist intervention, so far as is compatible with statutory responsibilities, in order to inspire over the long run the best delivery from the system as a whole at the best price. This advice relates to the general direction, or an attitude of mind, and is more basic and important than any particular suggestion or *modus operandi* that might be tested or implemented by the Canadian Dairy Commission.

Dr. Skeoch made some particular suggestions to illustrate his general comments, in addition to his opinion that it was important that the Canadian Dairy Commission avoid adopting formulae or setting targets or supports on a cost justification, or cost recovery, basis. His principal suggestion is that serious consideration should be given to eliminating the support prices for processed products such as skim milk powder and butter and, instead, to simply have a target price for producers for their industrial milk together with a direct subsidy to producers and that the subsidy be related to social considerations rather than directly to volume of production. Dr. Skeoch would eliminate the quotas for the production of industrial milk and he would use the direct subsidy to producers to the extent that it appeared necessary in order to push the producers towards the target price and to make up what the market failed to provide in terms of a socially acceptable family income level. His suggestion was that the target price be adjusted over time if necessary in order to achieve greater or lesser total production, the timing of the adjustments to take account of the planning and production period involved in dairy production.

Dr. Skeoch was of opinion that there would have to be a transition period if quotas were to be eliminated, in order not to be unreasonable with respect to the investment that people had made in quotas. Public policy, after all, instituted the quota system, and the producers should be given a period of time to work off the costs and the various investments they have undertaken in relation thereto. Dr. Skeoch suggested as one possibility that some system of quotas, gradually diminishing over a period of, say, five to seven years, might be considered.

In Dr. Skeoch's view it is in the long-run interest of both the producers and the economy as a whole to adopt the perspective he recommended.

Evidence of Dr. S.C. Barry

Dr. Barry stated that, in general terms, the way the Canadian Dairy Commission attempted to come to grips with the generalities of the objects set out in Section 8 during the years he was Chairman of the Canadian Dairy Commission was to adjust the target support price to the level where the Canadian Dairy Commission thought it would produce enough to meet what had been determined to be the national requirements.

With respect to the concepts of "efficient producers" and "fair return", Dr. Barry stated as follows:

"Basically I suppose the measure of efficiency is whether a given producer is capable of operating under the price that has been established as the basis of support. . . . the end result as to whether a given price brings out the product required I think demonstrates whether it is being done by efficient producers."

"... if the deliveries start to go down then obviously whether it is expressed as fair or expressed as productive is a matter I suppose that would make an indication of a need for adjustment. Basically we had a formula as I recall it relating to changes in prices, changes in target prices in relation to certain input costs which I suppose is the common practice used in many price negotiation matters."

Dr. Barry explained the nature of the support program that was implemented under the *Canadian Dairy Commission Act*, as has been referred to above. In terms of the tabular or graphic description of the support program (see this Report, Chapter III(B)1), Dr. Barry said that the process of setting the support price really began with an original calculation or estimation of what was required in order to maintain a level of production of dairy products that was determined to be the national requirement. Taking this, together with the target support price, the other calculations including that of the support price for butter and skim milk powder were made. The first decision made in terms of prices was the Canadian Dairy Commission target support price. He stated that "our fundamental purpose in establishing what we regarded as the final target support price was to set it at a level which would equate the total milk production with Canadian demand, Canadian needs."

Evidence of R.M. Cloutier

Mr. Cloutier is the Director of Economic Studies section of the Canadian Dairy Commission, which

section gathers statistics that are used to forecast milk supply, forecast demand, estimate Canadian requirements and the size of market quota, and also calculates processing costs and so on. He said that these figures are used by the Canadian Dairy Commission, the Canadian Milk Supply Management Committee, and others.

Mr. Cloutier said that the Returns Adjustment Formula referred to earlier in this Report represents the Canadian Dairy Commission's attempt to identify efficiency and to provide the opportunity to efficient producers of obtaining a fair return for their labour and investment.

Mr. Cloutier regarded the Returns Adjustment Formula that was adopted in April 1975, and which has been used since, as "a successful experiment". (He also stated that in 1980 the Canadian Dairy Commission was undertaking a complete review of the Formula in order to determine whether in the judgement of the people associated with the Canadian Dairy Commission the Formula was achieving the objectives of Section 8 so far as the Canadian Dairy Commission was able to do so. The review and assessment of the Formula was being undertaken in consultation with the industry, with the Dairy Farmers of Canada and with different Departments of Agriculture across the country.)

Prior to 1975 the target price established for dairy farmers was established on the basis of annual consultations between the Federal Government and the Dairy Farmers of Canada. Following the consultations and the exchanges of information the Minister of Agriculture would make a decision as to whether to increase, decrease or alter the target price at that time.

As outlined in Chapter III, above, the 1975 formula was arrived at on the basis of consultations between the Dairy Farmers of Canada and the Canadian Dairy Commission. The basis of the formula was data and information obtained through an analysis of 125 farm account books from Quebec and Ontario for the years 1970, 1971 and 1972. From those account books were extracted figures relating to the cost of production per hundred weight of milk, and the costs were broken down into three components. The following summarizes what Mr. Cloutier said:

- (a) Cash cost — expenses which the dairy farmer has to disburse on a daily or weekly basis to keep his operation running.
- (b) Capital costs — investment requirements for different sizes of herds and levels of production (buildings, machinery, interest on money borrowed, etc.). In 1975 the costs of the quota were taken into

account as part of the costs of investment—it was determined that it cost \$2.20 per hundredweight of milk to maintain the investment on the farm.

- (c) Labour—rather than using the average of the farms sampled, a lower average was used, derived from the account books of farmers who were milking more than 17 cows. This average was .8 hours per hundredweight of milk. "...we wanted to price the milk to enable an efficient dairy farmer to make a fair return on his labour and investment." "That labour requirement was more likely to be the labour requirements of an efficient dairy farm rather than the overall average for the industry."

After determining the three cost components that go into the Formula, a base price was needed to which the Canadian Dairy Commission could have reference. On April 1, 1975, following negotiations between the Government and the Dairy Farmers of Canada, the Minister had announced a target price for industrial milk for the dairy year commencing at that time on April 1, 1975—of \$11.02. He also announced that the price from then on would be indexed on the basis of the cost components. In fact it is not fully indexed. The cash cost (45% of the target price) is indexed on the basis of eleven items that were determined to be relevant, and another 35% of the target price is indexed to the consumer price index. The remaining 20% is left to Ministerial discretion. The formula or the indexation is reviewed every three months.

"...the target price announced by the federal government is an approximation of what...the federal government believes dairy farms should be receiving across Canada. From that point on the way milk prices are set...is...through negotiation by, between producers and processors for each product. What they do really is they use the price announced by the federal government as a target, as an objective which they should meet. What Mr. McLaughlin has said as well is that in Quebec and Ontario the producers achieve the target price...they price their milk in a way that they can obtain that target price."

In fact, Mr. Cloutier said, there is some evidence in Ontario and Quebec that in

fact dairy farmers can achieve a better price than the target price, whereas in western and eastern Canada, because of lower milk production, processors usually need more money to process milk on a per hundredweight basis than farmers in Ontario and Quebec.

"The price support program put in place by the Canadian Dairy Commission wouldn't normally enable processors to pay whatever we call the target returns from the marketplace."

"...as soon as [the dairy farmer] receives the world price for his milk, he simply quits delivering milk at that price. So, the fair return as far as the fair price, the target price, the fair return limit is very close to the overall target price announced."

Mr. Cloutier felt that the Canadian Dairy Commission had provided some pressure for efficiency by discounting the average labour cost when it was structured into the formula. He was further of the view that the tendency during the 1970's towards larger farms, and a decline of smaller dairy farms, was evidence that this bit of pressure in the formula was having some effect. It was on this basis and in this connection that he expressed the view that "technological progress is still registered" within the formula and "market pressures have not been totally at least eliminated from the Canadian dairy industry."

Mr. Cloutier stated that "...we would like to think that we can through research, through statistics, through samples at the farm, we can identify what efficiency is all about or at least come up with some definition of it..." In Mr. Cloutier's view the opportunity for efficient producers to earn a fair return was, in effect, being achieved if farmers will produce to their quota levels on the basis of the target price as determined.

Mr. Cloutier also said that in his view the fact that 20% of the target price remains unindexed and left to Ministerial discretion, means that certain economic incentives and pressures will thereby be brought to bear on the dairy industry.

Regarding the concept of "adequate supply", Mr. Cloutier stated that in determining the national requirements for industrial milk on an annual basis the Canadian Dairy Commission examines the records of production, stocks, exports, and so on, and seeks to determine whether the target support price will throw up what has been determined to be the national requirement. The Canadian Dairy Commission assumes the target price for this purpose, although apparently economists within the Department of Agriculture utilize econometric models for

testing various price assumptions. This was not elaborated upon.

Mr. Cloutier said that the Canadian Dairy Commission seeks to ensure "adequate supply" in conjunction with the provinces through the framework of the Canadian Milk Supply Management Committee. He testified that in 1973 and 1974 prices had to be increased several times "to maintain an adequate price level to farmers so that we could obtain the milk supply which... we needed to satisfy the consumers."

(In view of the intent of Parliament when it enacted the *Canadian Dairy Commission Act*, and in the light of Dr. Skeoch's opinion evidence, a number of points should be noted: It is apparent that Dr. Barry and Mr. Cloutier in the evidence restated the problem and their evidence did not constitute an analysis of the short and long-run dimensions of Canadian Dairy Commission policies and practices in relation to Section 8. Their evidence made it clear that the valuation of quotas constituted an important cost element, that quotas controlled the amount of domestic production, that imports were strictly regulated, that the processing and distribution sectors were substantially protected—hence that prices and output were jointly controlled and the resultant finished products were disposed of on the domestic market by subsidized exports, or carried over by storage programs. Apparently also no efficiency tests in relation to comparable foreign producers were undertaken, no actual experimentation in terms of consumer prices in the market, or price discrimination programs, no market discipline through imports, and so on, were engaged in as might minimally be expected to provide some assurance that production and distribution efficiency was achieved and the consumer interest was protected.) (It should be mentioned in connection with these comments that Mr. Cloutier testified that in 1980 a general assessment of the policies was being undertaken internally to seek to measure their impact and to consider any need for modifications.)

Other Evidence

It might also be appropriate here to note one of the concluding observations of a recent study conducted by Dr. R.M.A. Loyns of the Faculty of Agriculture of the University of Manitoba ("Farm to Food Prices", Economic Council of Canada, January 1980), a copy of which was marked in evidence as Exhibit 72:

"A number of alternatives exist for dealing with longer-term food price increases. One option is subsidized producer or consumer prices: the efforts to date illustrate that the costs of these efforts for achieving even modest and temporary benefits are enormous. A second option involves more regulation of farm prices and extension of controls into other components of the food chain. It is

difficult to be optimistic about this alternative in view of the growing experience during the past few years. The other major alternative is to sharpen competitive forces, strive to improve productivity, and work to reduce structural rigidities in the entire food system. This option will not achieve price stability, but it will assure that in the long-term, food prices are as low as conditions permit and that the Canadian food industry is as productive as our resource base allows."

Dr. Loyns estimated that Federal Government support payments to producers of industrial milk during the 1977-78 dairy year approximated an average \$9,500 per farmer.

Accountability

Dr. Skeoch testified with respect to the need for some institutional mechanism whereby the Canadian Dairy Commission would be obliged to account publicly for the policies it had adopted and their long-run effects. This aspect of accountability must be distinguished from financial accountability, which is an aspect handled by the Auditor General of Canada, and from accountability for conduct in the administration of policy, which concerns such things as whether personal discrimination took place against, for example, Schafer Bros. Ltd. The subject of Dr. Skeoch's principal interest with respect to accountability was, as he put it:

"...economic accountability in the sense that it is used in industrial organization analysis. In other words, the requirement is efficient producers, fair return, adequate supply and these are the sorts of issues that I consider to be the ones that require accounting for. In other words, has the Commission assured the efficiency of the producer, has assured the fairness of the return, has assured the adequacy of the supply?"

The normal way in which economic accountability is ensured is through the operation of an open market economy. However, as stated by Dr. Skeoch, "where comprehensive government controls are imposed on the market... the longer-run requirements of accountability render the suppression of market signals related to dynamic change a very serious matter for the industry and the economy..."

An additional special concern regarding economic accountability arises with respect to government agencies such as the Canadian Dairy Commission who have extensive power and influence on both the buying and selling sides of certain markets, such as those for skim milk powder. The risk is that a person in such a position can obscure certain market signals and use its power on the selling side of the market to

validate its decisions on the buying side of the market:

"...if you are both a monopsonist and monopolist, you can settle both sides of the equation, both the supply and the demand side and you cannot say that that is a response to market pressures. That is a response to a determination made by the administrators as to how much will be allowed to be produced, how much will be allowed to be imported and so on and the net outcome of that, I don't see how anybody can say it is fair or adequate. I couldn't say. I always say there is one way to try it. Let's try to open it up to some sort of competition." (Dr. Skeoch — Transcript p. 348)

To say that there is a need for some mechanism to ensure accountability is not to say that there are obvious and widely-accepted mechanisms which can be prescribed. Indeed, as pointed out by Dr. Skeoch, there is inevitably a conflict between flexibility and accountability; very strict accountability requirements could only be imposed at the cost of reducing scope for experimentation and for trying things out. It is a matter of compromise, taking into account the long-run and experimental nature of some of the programs that should be attempted. Essentially, in addition to periodic policy assessments and review, there should be an attempt to seek to create pressures or incentives through the price structure to encourage producers to adopt economies by way of new technology, new organizational methods, and so on.

Dr. Skeoch had no objection in principle to what he called "third-degree price discrimination", which refers to the separation of submarkets for the purpose of different price structures. The evidence showed different price structures to exist as between export and domestic submarkets, and as between animal feed and human consumption applications. However, Dr. Skeoch was disturbed over the fact that there was no apparent basis provided by the Canadian Dairy Commission upon which anyone could assess its price discrimination programs in terms of achieving the public policy goals for producers or those for consumers. Certainly no evidence was given by the Canadian Dairy Commission regarding the basis upon which it undertakes its price discrimination programs. Could the price in the domestic market be lowered by selling more of the skim milk powder in the domestic market? Dr. Skeoch stated that with a properly based third-degree price discrimination program the marginal return, which should be equal to the marginal cost, should be the same in all submarkets. Although the price would differ in each of the submarkets according to the elasticity of demand in each, the marginal revenue should be the same.

As indicated above, Dr. Skeoch was emphatic in his view that a cost justification basis for prices and returns is in no sense a defensible standard of accountability, because it insulates people from market pressures and is inconsistent with dynamic change.

Dr. Barry testified that the basic mechanisms for requiring the Canadian Dairy Commission to answer as to its policies were the need to defend to the government its total estimates for expenditures, including any proposals to change the amount of the direct producer subsidy, and appearances before the Agriculture Committee of the House of Commons to answer questions regarding dairy policy. The Minister or Deputy Minister would, further, be advised regarding "any major change of policy", and apart from that there are various consultations that take place with departmental officials.

It is difficult to know just how effective the existing mechanisms are for accountability for broad policies in the terms discussed by Dr. Skeoch. *Report of the Auditor General of Canada to the House of Commons*, Fiscal Year Ended March 31, 1979, Chapter 8 "Control and Accountability of Crown Corporations" Dr. Barry stated that he could not recall ever receiving a directive as such from the Minister or the Governor in Council pursuant to the provisions of Section 11 of the Act, nor could he recall any recommendation by the Canadian Dairy Commission as to the level of the support price ever having been turned down by the Minister or the Cabinet. These facts may have little real significance in terms of effective accountability. Dr. Barry could not, however, recall any initiative having been taken by the Minister to consult with him or with members of the Canadian Dairy Commission on matters of export policy.

Dr. Barry said he found his discussions with the Consultative Committee to be very useful with respect to broad changes in the operations of the Canadian Dairy Commission, which during his tenure as Chairman were generally reviewed with the Committee.

As to another aspect of accountability mentioned above, namely, accountability for conduct in the administration of policy, Dr. Barry was asked what assurance, if any, a particular trader would have that he was being treated as favourably by the Canadian Dairy Commission as were his competitors, either with reference to the same potential business or in general terms. Dr. Barry answered that apart from an element of trust in the intelligence and integrity of the individuals in charge of the Canadian Dairy Commission, there was no assurance. There was no institutional mechanism that could give the trader the assurance that he was being treated fairly, and if he had a complaint his remedy was to complain to the Canadian Dairy Commission "or to take it a further step if they wished".

CHAPTER V

THE CLAIM FOR COMPENSATION

It is necessary to establish the nature of the claim of Schafer Bros. Ltd. in order to determine if it is well founded.

NATURE OF CLAIM

Schafer Bros. Ltd. claims compensation not only for the loss of the Mexican market, which it asserts the Canadian Dairy Commission took over in 1971, but also for damages suffered on account of irregular behaviour of the Canadian Dairy Commission, its officers and employees in 1969, 1970 and 1971.

1. *Loss of Mexican Market*

Schafer Bros. Ltd. by its officer David Schafer believes that it, alone and single-handedly, created and developed the Mexican market for Canadian skim milk powder. It believes it achieved that result by investing over a long period of time much money, time and effort to develop a unique relationship with CONASUPO officials.

David Schafer said he had been led to believe by CONASUPO officials in January 1968 that if Schafer Bros. Ltd. could offer a price in the 8¢ to 9¢ per pound range, it would get the 25,000 ton sale for which CONASUPO was inviting tenders.

Schafer Bros. Ltd. alleges that the Canadian Dairy Commission, without warning and despite the fact that it had encouraged it to develop the Mexican market, took away the market by diverting the business to itself and to others in the various ways set out in the allegations.

Schafer Bros. Ltd., by its two officers, David Schafer and George Schafer, says that its main business interest was thereby "expropriated" and that it was deprived of its main prospective source of business income without having the change to recoup its capital invested in developing this Mexican market, claimed by it to be about \$500,000.

Details of the genesis of the claims of Schafer Bros. Ltd., which commenced being made in 1969, are now set out. The purpose in doing so is to enable one to appreciate what the officers of Schafer Bros. Ltd. said at the material times, how the nature of these claims evolved and, generally, the essence of the claims of Schafer Bros. Ltd.:

- a) A claim for compensation was made by George Schafer, with reference to the

January 1968 tender, in the winter of 1969. George Schafer claimed that Schafer Bros. Ltd. lost \$40,000 when the 1968 CONASUPO contract was awarded to Commercial Credit Corporation of the United States and that Schafer Bros. Ltd. was not compensated, and suggested that "... it would only be just that only we should be the only Canadian firm to conclude the business with the Mexicans." (letter from George Schafer to the Honourable J.L. Pépin, January 17, 1969, Exhibit 12, p. 272, [in French] and to the Honourable H.A. Olson, January 29, 1969, Exhibit 12, pp. 290-292).

- b) On February 19, 1969, David Schafer wrote to the Honourable H.A. Olson, the Minister of Agriculture, (Exhibit 12, Vol. 2, p.p. 332-4) stating that "To us, the loss of the business last year has caused and is causing us severe hardships. As we were the only private firm in Canada invited to offer last year until we had been prevented by the C.D.C. from satisfying this customer, I expected that a way would be found to help us get the business we lost because of the C.D.C.: That we should be the only ones from Canada to offer to Mexico this year."
- c) On May 17, 1971, David Schafer wrote to the Honourable H.A. Olson indicating that Schafer Bros. Ltd. had been rendered "impotent" by the Canadian Dairy Commission's refusal to make an offer to it for the 1968 tender and had received no compensation for its failure to obtain the large 1969 contract for sale to CONASUPO, which was obtained by Ronald A. Chisholm Ltd. and Thomas P. Gonzalez Inc., and claiming that it had been misled by the Canadian Dairy Commission (Exhibit 12, pp. 597-598).
- d) George Schafer wrote to the Honourable H.A. Olson on June 28, 1971, stating that..."If we don't have the Mexican business, our firm has little chance for survival till the end of this year, having been weakened by the C.D.C., by inflation, tight money, high interest rates, and other hardships..." (Exhibit 12, p. 625)
- e) George Schafer wrote to the office of the Prime Minister on September 24, 1971, asking for compensation: "... we ask that we receive a reasonable normal commission of 2% after all the milk powder the C.D.C. sold direct to CONASUPO." (Exhibit 12, p. 657)

- f) David Schafer wrote to the Honourable H.A. Olson on December 16, 1971, asking for compensation for the loss of the Mexican export market (as had George Schafer when he wrote on September 24, 1971) requesting

“... a reasonable, normal commission of 2% after all the milk powder the C.D.C. sold direct to CONASUPO, Mexico.” (Exhibit 12, p. 799)

- g) David Schafer also requested that: “ the C.D.C. be prohibited to enter into any export sales agreement” (Exhibit 12, p. 675).
- h) In February 1973, Schafer Bros. Ltd. wrote to Dr. Barry stating that it lost more than \$500,000 as a result of the taking of its main markets and asked for his help to obtain some kind of compensation. (Exhibit 12, p. 807)
- i) On November 7, 1973, George Schafer wrote to the Honourable Eugene Whelen stating that Schafer Bros. Ltd. lost its business and all the capital it invested (\$500,000) and claiming 2% on all sales of Canadian skim milk powder to CONASUPO (Exhibit 12, p. 865)
- j) On November 23, 1973, George Schafer wrote to the Prime Minister asserting that between 1968 and 1972 Schafer Bros. Ltd. lost 95% of its sales and its capital investment of \$500,000, and stated that it had not received any compensation. (Exhibit 12, pp. 866-867)

In his letter to Gilles Choquette, then Chairman of the Canadian Dairy Commission on July 25, 1977, Michel Choquette summarized the claim of Schafer Bros. Ltd. for compensation.

In testimony at the hearing of this Inquiry George Schafer further stated that punitive damages should be assessed against the Canadian Dairy Commission (Transcript, p. 2357).

In order to understand the perception of Schafer Bros. Ltd. of its interest in the Mexican market, it is useful to keep in mind not only its philosophy regarding the creation of exclusionary rights to markets, but also its understanding of the Canadian Dairy Commission's proper role with respect to the export marketing of skim milk powder. According to Schafer Bros. Ltd., it developed the Mexican market for Canadian skim milk powder, and therefore had a monopolistic right to deal exclusively with CONASUPO that could not lawfully or fairly be taken away from it as long as CONASUPO was purchasing skim milk powder from Canada (Tran-

script pages 2350, 2354, 2358). In addition, in its view, the Canadian Dairy Commission ought not to compete with private traders, but instead had the duty to do everything possible to assist private traders in developing and maintaining any foreign markets, such as the foreign markets for Canadian skim milk powder.

This appears to be the basis for the claim by Schafer Bros. Ltd. for a commission in the order of two percent on all sales of Canadian skim milk powder made by Canadian traders or by the Canadian Dairy Commission to CONASUPO from 1968 to such time as Schafer Bros. Ltd. decided it did not want this business.

In this respect, when David Schafer first ascertained at the hearings of this Inquiry that other private Canadian traders had been selling Canadian skim milk powder to CONASUPO even earlier than 1968 and during the period 1968, 1969 and 1970, David Schafer informed this Commission of Inquiry that Schafer Bros. Ltd. in the future would be prepared to share its exclusive rights to the Mexican business and the right to commission on all sales to CONASUPO with the private traders that he had ascertained from the evidence had been selling Canadian skim milk powder to CONASUPO at least by 1968, namely Ronald A. Chisholm Ltd., Eastern Townships Produce Ltd. and Granby Co-op.

David Schafer, in his evidence, asserted that Schafer Bros. Ltd. is claiming the alleged losses and costs described in the document marked as Exhibit 6, Vol 9, Section G. Essentially, this document represents an estimate of the time spent by Schafer Bros. Ltd., to which is given a capital value, and also of its loss of profit based on the premise that Schafer Bros. Ltd. had the business during all the relevant period that was in fact carried out by the Canadian Dairy Commission and other private traders with CONASUPO. This document was prepared by Michel Choquette with the help of accountants and bookkeepers (Transcript, p. 987). An estimate is made of the Schafers' salaries and office expenses claimed to be attributable to the effort expended to obtain the CONASUPO business. In this document, according to Schafer Bros. Ltd., a two percent commission is conservative, and its counsel, in relation to this, in his written argument submitted that the Canadian Dairy Commission pays its agents between three percent and five percent.

2. *Other Unlawful or Unfair Behaviour*

Schafer Bros. Ltd., by its officers, says it believes that the Canadian Dairy Commission, in the course of taking away the CONASUPO market, engaged in other unlawful or unfair behaviour that caused damage to Schafer Bros. Ltd. Particularly, it alleges that:

- a) In January 1968 the Canadian Dairy Commission misused information given to it by Schafer Bros. Ltd. in order to compete with Schafer Bros. Ltd., unexpectedly withdrew its support, and was responsible for the loss of the sale to CONASUPO obtained by Commercial Credit Corporation of the United States.
- b) Between January and March 1969, the Canadian Dairy Commission provided Schafer Bros. Ltd. with false information regarding supplies, caused it to be late in its deliveries to CONASUPO, and seriously compromised its efforts to demonstrate its capabilities to carry out any contract to CONASUPO, something that was important in view of the large 25,000 ton invitation to tender to supply that CONASUPO was going to issue in the then near future.
- c) In March 1969, Dr. S.C. Barry misled David Schafer regarding the circumstances under which a trader would be entitled to the payment of the subsidy and was thereby responsible for the loss of the sale to CONASUPO subsequently made by Ronald A. Chisholm Ltd. and Thomas P. Gonzalez Inc.
- d) The Canadian Dairy Commission gave favoured treatment to competitors of Schafer Bros. Ltd. viz. the August 1968 so-called Consortium sale prevented Schafer Bros. Ltd. from making sales, the Canadian Dairy Commission recommended competitors of Schafer Bros. Ltd. when inquiries

were made by foreign traders in respect to possible business; and some inside information was given to Ronald A. Chisholm Ltd. and Thomas P. Gonzalez Inc. which enabled them to outbid Schafer Bros. Ltd. and obtain the 1969 and 1970 sales to CONASUPO.

- e) The problems that the Canadian Dairy Commission created for Schafer Bros. Ltd. by its irregular behaviour resulted in a significant loss of reputation which, together with its loss of "capital", prevented it from obtaining financial backing from loan institutions.
- f) In order to demonstrate the nature of the irregular behaviour and the negative attitude of the Canadian Dairy Commission regarding Schafer Bros. Ltd., the Schafers also allege various instances of lack of cooperation from the Canadian Dairy Commission.

Michel Choquette, for Schafer Bros. Ltd., stated that it does not make "either a moral or legal claim" for compensation regarding sales or potential sales to Cuba or to the Philippines.

As to the CONASUPO market, Michel Choquette asserted that Schafer Bros. Ltd. had a good legal claim based on "criminal, civil and administrative law"; he stated, however, that Schafer Bros. Ltd. felt that "the whole matter should be approached on a moral basis rather than a legal one" and that Schafer Bros. Ltd. requested an *ex gratia* payment of compensation.

CHAPTER VI

THE ALLEGATIONS: FACTUAL DETERMINATIONS

The Statement of Allegations as distilled from the pre-Inquiry writings of Mr. Michel Choquette and as amended at the outset of the public hearings at the request of counsel for Schafer Bros. Ltd. and Michel Choquette, was marked as Exhibit 20 and is reproduced in full as Appendix 5 to this Report.

The Statement of Allegations is divided into Parts I and II.

Part I of the Statement of Allegations consists of a number of separate allegations which, it is alleged by Schafer Bros. Ltd. and Michel Choquette, form a factual basis for the fundamental allegation that "the Canadian Dairy Commission, its officers and employees acted unlawfully or unfairly during the years 1966 to 1977 in their dealings with Schafer Bros. Ltd. relating to the export from Canada of skim milk powder". Part I is segmented into Section "A", which contains the allegations referring to specific events, and Section "B", which contains the allegations amounting to more general complaints about Canadian Dairy Commission policies or the lack thereof.

In this Chapter of the Report there will be determinations made of the factual questions raised in Sections "A" and "B" of Part I of the Statement of Allegations. In Chapter VII will be considered the basic question as to whether, on the facts as found, the Canadian Dairy Commission, its officers or employees acted unlawfully or unfairly during the years 1966 to 1977 in their dealings with Schafer Bros. Ltd. relating to the export from Canada of skim milk powder.

Part II of the Statement of Allegations consists simply of the allegation that as a result of the conduct referred to in Part I, Schafer Bros. Ltd. suffered losses and is entitled to be compensated for those losses. This is considered and determined in Chapters VI and VII.

1. *Allegation A.1(a)*

Allegation A.1(a) consists of a general allegation and two subsidiary allegations of fact. The general part of the allegation is as follows:

"The C.D.C. excluded Schafer Bros. Ltd. from the business of supplying Canadian skim milk powder to CONASUPO (a Mexican agency), and diverted business oppor-

tunities with CONASUPO to itself and to others..."

The key words in this Allegation are "excluded" and "diverted".

The means by which the Canadian Dairy Commission is alleged to have "excluded" Schafer Bros. Ltd. are, with one exception, the subject of other more specific allegations and are dealt with below, namely,

- (a) That in January 1968 the Canadian Dairy Commission refused to supply skim milk powder to Schafer Bros. Ltd. in connection with a tender call by CONASUPO, while at the same time bidding itself (see for this Allegation A.2, below) and subsequently in 1968 supplying a large volume of skim milk powder at very low prices to a consortium for the purpose of export sales (see for this Allegation A.3, below);
- (b) That in early 1969 the Canadian Dairy Commission acted and failed to act in such manner as to make it unnecessarily difficult for Schafer Bros. Ltd. to fill its first (and only) contract for the sale of skim milk powder to CONASUPO (see for this Allegation A.4, below);
- (c) That subsequently in the spring of 1969 the Canadian Dairy Commission acted and failed to act in such manner as to prevent Schafer Bros. Ltd. from winning a contract to supply 25,000 tons of skim milk powder to CONASUPO (see for this Allegation A.5, below);
- (d) That "irregular behaviour" on the part of senior officials of the Canadian Dairy Commission caused Schafer Bros. Ltd. to lose out to a competitor on prospective sales to CONASUPO in 1969, 1970 and 1971 (see for this Allegation A.6, below);
- (e) That in 1971 the Canadian Dairy Commission frustrated a maturing business opportunity for Schafer Bros. Ltd. to structure a combination wheat/powder deal with Mexico by selling a large quantity of skim milk powder to CONASUPO (see for this Allegation A.7, below);
- (f) That in 1971 the Canadian Dairy Commission discontinued the subsidy on the export sales of skim powder to CONASUPO (see for this Allegation A.1(b)(vi), below); and
- (g) That in 1977 the Canadian Dairy Commission appointed Ault Foods (1975) Ltd. as its marketing agent to sell skim milk powder to CONASUPO (see for this Allegations B.5 and part of B.8, below).

It should be noted that (a) to (e) above apply to Schafer Bros. Ltd. alone, whereas items (f) and (g) apply equally to all private exporters of skim milk powder.

One other allegation of exclusion, the one exception referred to above, is dealt with in the argument of counsel for Schafer Bros. Ltd. submitted after the conclusion of the evidence. Counsel's argument refers to rumours that were allegedly circulated about Schafer Bros. Ltd. by the Canadian Dairy Commission, the truth of which is denied by Schafer Bros. Ltd. Counsel's submission was that the rumours were that Schafer Bros. Ltd. had not contributed to the development of the CONASUPO market, that Schafer Bros. Ltd. had no experience in exporting skim milk powder, and that Schafer Bros. Ltd. was linked to skim milk powder smuggling operations in Northern Mexico.

As to these rumours, the sole evidence before the Commission is a November 1974 internal memorandum by a Department of Agriculture legal advisor repeating some comments apparently made to him, privately, by Mr. Sherk, a marketing official of the Canadian Dairy Commission. There is no evidence that the internal memorandum or the comments had any general circulation, nor that the rumours referred to in the memorandum in any event were conveyed or known to any person in authority to make decisions in the Canadian Dairy Commission. There is no evidence of any decisions having been influenced in the slightest way by the rumours. As a result, the fact that this internal memorandum records some rumours proves nothing.

The means by which the Canadian Dairy Commission is alleged to have "diverted" business opportunities are, likewise, the subject of other more specific allegations, and are dealt with below, namely,

- (a) That the Canadian Dairy Commission used information supplied to it from time to time by Schafer Bros. Ltd., which information had been obtained by Schafer Bros. Ltd. in the course of making its promotional efforts and investment in Mexico (see for this Allegation A.1(b)(i), below);
- (b) That the Canadian Dairy Commission bid directly to supply skim milk powder to CONASUPO in January 1968, thereby attempting to divert to itself this business opportunity, and that at the same time the Canadian Dairy Commission prevented Schafer Bros. Ltd. from taking advantage of the first opportunity to make a major sale of Canadian skim milk powder to CONASUPO by refusing to supply Schafer Bros. Ltd. with skim milk powder (see for this Allegation A.2(a) and (d), below);
- (c) That in May 1969 the Canadian Dairy Commission attempted to enter a contract with CONASUPO to sell it 25,000 tons of skim milk powder (see for this Allegation A.5(c), below), and that the sale was actually diverted to

Ronald A. Chisholm Ltd. and Thomas P. Gonzalez (see for this Allegation A.5(a), below);

- (d) That a business opportunity to sell 7,000 tons of skim milk powder to CONASUPO in 1970 was diverted to Ronald A. Chisholm Ltd. (see for this Allegation A.6, below);
- (e) That a full-scale diversion to the Canadian Dairy Commission of business opportunities for the sale of Canadian skim milk powder to CONASUPO occurred in and after 1971 by virtue of the Canadian Dairy Commission's discontinuance of the payment of subsidy on the export sale of skim milk powder to CONASUPO (see for this Allegation A.1(b) (vi), below);
- (f) That the exclusion of Schafer Bros. Ltd. and all other private exporters, except Ault Foods (1975) Ltd., from the opportunity to deal with CONASUPO in the sale of Canadian skim milk powder resulted from the appointment by Canadian Dairy Commission in 1977 of Ault Foods (1975) Ltd. as the Canadian Dairy Commission's marketing agent for the sale of skim milk powder to CONASUPO (see for this Allegation B.5 and part of Allegation B.8, below).

As noted, most of the above referred to categories of alleged exclusion by the Canadian Dairy Commission of Schafer Bros. Ltd. from the business of supplying Canadian skim milk powder to CONASUPO, and of diverting business opportunities with CONASUPO to itself and others, are the subject of specific allegations in respect to which determinations will be made later in this Report. As a consequence it is not necessary to do so under this general Allegation. It is sufficient here to make only certain general observations. Schafer Bros. Ltd. and its officers were in error, as was their counsel, in their allegation and submissions that it was necessary for a private exporter of Canadian skim milk powder, for a sale to CONASUPO or any other foreign buyer, to obtain the product for such sales from the inventory of the Canadian Dairy Commission, failing which such private exporter would not obtain the payment of the export subsidy on such sales.

The only thing that is true is that the Canadian Dairy Commission usually had, for the most part, a substantial inventory of skim milk powder because it bought it from the private sector under its standing offer to purchase, or price support program. But it is not true to say that a private exporter could not obtain skim milk powder for sale in the export market from Canadian sources in the private sector. The evidence discloses that certain private exporters who did sell to CONASUPO and other foreign purchasers, during the relevant years, obtained the inventory for such sales from sources other than Canadian Dairy Commission inventory, often were in the busi-

ness of manufacturing skim milk powder themselves and were also on familiar business terms with others in the trade who manufactured skim milk powder. Schafer Bros. Ltd. was not engaged in the manufacture of skim milk powder.

In this connection it should be noted that in order to complete its shipments of skim milk powder to CONASUPO under its contract with CONASUPO entered into in January, 1969, for 770 tons, Schafer Bros. Ltd. sourced some of the skim milk powder from sources other than the inventory of the Canadian Dairy Commission and was paid on the total of the skim milk powder shipped a subsidy by the Canadian Dairy Commission pursuant to its normal subsidy program in place in 1969.

Speaking generally in this connection, from the whole of the evidence it is apparent that no trader was under any misapprehension during any of the relevant years that a trader had to obtain the skim milk powder for any export sale from the Canadian Dairy Commission, failing which it would not receive a subsidy. A possible exception is the request for tenders to purchase the skim milk powder inventory then on hand at the Canadian Dairy Commission which was the subject of the Canadian Dairy Commission circular dated January 29, 1968 (see Document 185, Exhibit 12). This circular appears to have resulted in the so-called "consortium sale" of 35,000 tons of skim milk powder at 4¢ by the Canadian Dairy Commission in August, 1968. This sale will be referred to later in this Report. Briefly, it was a sale of old stock of skim milk powder to Eastern Townships Produce Ltd., who in turn resold it to a Consortium in Europe for further resale outside the western hemisphere.

2. Allegation A.1(a)(i)

Allegation A.1(a)(i), one of the subsidiary allegations of fact to the general allegation just dealt with, is as follows:

"The interest of CONASUPO in Canadian skim milk powder resulted substantially from promotional efforts made and expense incurred by Schafer Bros. Ltd."

The word "substantially" was added at the request of counsel for Schafer Bros. Ltd. to this allegation as originally drafted by Commission counsel. In Michel Choquette's pre-Inquiry writings it was expressly asserted that Schafer Bros. Ltd. created "single-handedly" Canada's two largest export markets for surplus skim milk powder — Cuba and Mexico. I granted the request to add the word "substantially".

This allegation turns on the source or sources of CONASUPO's knowledge of and interest in Canadian skim milk powder.

The evidence disclosed:

- (a) David Schafer did not know of other Canadian traders in Mexico. Messrs. Rodriguez Ayala and Rodriguez Licea advised David Schafer, and said in evidence statements, that Schafer Bros. Ltd. was the only serious Canadian trader in Mexico with respect to skim milk powder until about 1969. Mr. Rodriguez Licea, the Purchasing Manager of CONASUPO from 1962 to 1970, said in his evidence statement that: "To the best of my knowledge, Mr. Schafer was the first Canadian trader in milk powder who took the time and trouble to visit us at CONASUPO, and throughout the years I was at CONASUPO, he was the only Canadian trader actively promoting Canadian milk powder here." Mr. Rodriguez Ayala, Assistant to the Sales Manager of CONASUPO from 1963 to 1970, in his written evidence statement said: "The company Schafer Bros. Ltd. was the first Canadian firm to make direct sales of skim milk powder to CONASUPO... this came about as a result of several visits made by Mr. David Schafer in the beginning of 1961 (first to the predecessor of CONASUPO, i.e. CEIMSA, and then to CONASUPO when it came into existence)... during this period and by means of these visits and correspondence, Schafer Bros. Ltd. became familiar with Mexican specifications and quality requirements for milk, and kept up to date regarding these...[I]n my personal opinion... it was the effort and work of Mr. David Schafer alone which brought Canadian powdered milk to the attention of CONASUPO and made it known in Mexico."
- (b) David Schafer said that he made several trips to Mexico for the purpose of selling skim milk powder, for other business reasons and for personal reasons. David Schafer said he first met officials of CONASUPO in January 1965.
- (c) Official Government statistics of both Canada and Mexico record that Canadian skim milk powder was sold to Mexico in the late 50's and in the 60's prior to 1968. The evidence of Messrs. Rocchi and Rodriguez Licea supports this. It was in January, 1968 that the Canadian Dairy Commission first made an offer to CONASUPO. David Schafer said that in January, 1968, for the first time he felt Schafer Bros. Ltd. had an extremely good chance of concluding a sale of skim milk powder to CONASUPO.
- (d) Other Canadian private traders, as for example Eastern Townships Produce Ltd. and Coopérative Agricole de Granby were attempting to sell Canadian skim milk powder to CONASUPO directly or through agents prior to 1968. Mr. P.

Pariseault of Granby Co-op stated that "from 1950 to 1953, we [Granby Co-op] sold regularly skim milk powder to Mexico; in fact, we were controlling, at the time, 70 percent of the private Mexican market. From 1953 to 1971, we [Granby Co-op] sold skim milk powder to the Mexican market, and more particularly, we sold 3 million pounds of skim milk powder in 1965 to CONASUPO."

Messrs. D. Curtis Bishop and Ronald D. Bishop, officers, directors and shareholders of Eastern Townships Produce Ltd., stated:

"ETP has made sales of Canadian manufactured products to: Argentina, Aruba, Bahamas, Belgium, Bermuda, Brazil, British Honduras, Canal Zone, Chile, Columbia, Cuba, Curacao, Denmark, Dominican Republic, Greece, Grenada, Guatemala, British Guiana, Holland, Honduras, Hong Kong, India, Iran, Iraq, Israel, Italy, Jamaica, Japan, Korea, Lebanon, Madagascar, Malaysia, Mexico, Nicaragua, Nigeria, Pakistan, Panama, Peru, Philippines, Rhodesia, St. Lucia, St. Vincent, El Salvador, Singapore, Spain, Sweden, Taiwan, Thailand, Trinidad, Union of South Africa, U.S.A., Venezuela.

In several of the above countries, ETP was (and is) represented by an appointed agent.

In Mexico, from 1961 to the present, ETP's agent has been Walter E. McAllister, Rio Lerma 339-2, Mexico 5, D.F. As ETP agent, Mr. McAllister maintained regular contact with private businesses, CEIMSA, and subsequently CONASUPO. Between 1961 and 1966, Dean R. Bishop personally visited CONASUPO in Mexico and met with Hector Rodriguez Licea, the purchasing manager of CONASUPO. Mr. McAllister and his wife were also present at this meeting. Dean R. Bishop has also met personally with Hank Gonzalez, former General Manager of CONASUPO."

Messrs. Brunet and Pariseault of Granby Co-op, and Messrs. Bishop of Eastern Townships Produce Ltd. were personally in Mexico dealing with Mexican government officials, and latterly CONASUPO, exploring the prospects of selling Canadian skim milk powder and other products.

From the interviews in Mexico City, particularly with Messrs Rodriguez Ayala, Rocchi and Arguelles, the above evidence was corroborated:

Several Canadian traders were in fact active in promoting the sale of Canadian skim milk powder to CONASUPO during the 1960's and in the course of

this promotion met with Messrs. Rodriguez Ayala and Rodriguez Licea in the Purchasing Department of CONASUPO. Mr. Benolol, a Mexican agent, was Granby's agent, and Mr. Walter E. McAllister was agent for Eastern Townships Produce Ltd. Some other Mexican agent represented Dominion Dry Milk Ltd., another Canadian company doing business with CONASUPO. Eastern Townships Produce Ltd. and Granby Co-op appear to have been more active than Schafer Bros. Ltd., and, in fact, the first sales of Canadian skim milk powder to CONASUPO were made by these companies. Mr. Rocchi stated that he introduced David Schafer of Schafer Bros. Ltd. to CONASUPO officials in 1965. Schafer Bros. Ltd. made their first and only sale to CONASUPO in 1969, 770 tons.

In addition, information was given that in the late 1960's, at approximately the time that CONASUPO's demand for foreign skim milk powder began to escalate, U.S. supply diminished substantially and the availability of skim milk powder from the U.S. to CONASUPO virtually ended, for a number of years, because of an incident or incidents involving the unauthorized re-sale of powder that was apparently supplied under an aid program.

- (e) In 1965 the Agricultural Stabilization Board began paying a small export subsidy on export sales of Canadian skim milk powder. This subsidy was increased by the Canadian Dairy Commission after it was established in 1966.

Until 1968 the major source of skim milk powder for the Mexican market was the United States. One of the principal reasons for this was no doubt the proximity of the two countries, resulting in low shipping costs.

A further factor that appears to have improved the prospects for the sale of Canadian skim milk powder to Mexico by 1969 was an alleviation of the concerns of CONASUPO officials regarding the bacteria count of skim milk powder in Canadian Dairy Commission stocks. Mexican officials were initially concerned about the high DMC count permitted by the Canadian Dairy Commission purchasing specifications, viz. 200 million, whereas CONASUPO limits were 75 million. In October 1967 Canadian Dairy Commission officials addressed themselves to this problem and advised the CONASUPO officials that there was no brucellosis or TB in Canadian cattle and that therefore a 200 million DMC count in Canadian powder was a tolerable limit for skim milk powder destined for human consumption.

In this latter connection, notwithstanding the efforts of Canadian Dairy Commission officials beginning in late 1967, CONASUPO insisted in January 1969 that for its purchase of 770 tons of

skim milk powder, the powder have only a 75 million DMC count.

It should be emphasized, as noted above, that this allegation relates to "the interest of CONASUPO in Canadian skim milk powder." The evidence clearly establishes that CONASUPO and its predecessor government agency CEIMSA were quite familiar with the fact that Canadian skim milk powder was being sold in the export market.

The only apparent equivocation in respect to this allegation is found in the witness statements of Mr. Rodriguez Ayala and Mr. Rodriguez Licea, but a careful reading of their statements and what they said indicates that their evidence does not relate to the point that is the subject of this allegation, viz. whether or not the interest of CONASUPO in Canadian skim milk powder resulted substantially from the promotional efforts made and expense incurred by Schafer Bros. Ltd. Instead, their evidence is directed to the more limited assertion that David Schafer was the only private Canadian trader who was personally active in trying to promote the sale of Canadian skim milk powder to CONASUPO. In so stating, Messrs. Rodriguez Ayala and Rodriguez Licea are not saying that other Canadian traders, such as Granby Co-op and Eastern Townships Produce Ltd., were not actively promoting the sale of Canadian skim milk powder to CONASUPO through their respective agents. What they are saying is that the other private Canadian traders, such as those mentioned and others, are not doing it directly, themselves, with CONASUPO.

From the above evidence and from all the other evidence, both oral and documentary, especially the evidence of David Schafer, Dr. Barry, Mr. T.A. Chisholm of Ronald A. Chisholm Ltd., Mr. Pariseau of Granby Co-op and Messrs. Bishop of Eastern Townships Produce Ltd., and the Mexican witnesses, this allegation is not supported by the evidence.

3. *Allegation A.1(a)(ii)*

Allegation A.1(a)(ii), the other subsidiary allegation to the general allegation of "exclusion" and "diversion", is as follows:

"The promotional efforts were made and the expense was incurred by Schafer Bros. Ltd. in reliance upon assurances by the C.D.C. to Schafer Bros. Ltd. that the C.D.C. would cooperate fully with Schafer Bros. Ltd. in the event that possibilities of sales to CONASUPO materialized."

The evidence in respect of this allegation, in the main, was as follows:

- (a) David Schafer said that he gave to Mr. D.B. Goodwillie, Director of Marketing of the Canadian Dairy Commission, and before that to officials of its predecessor, the Agricultural Stabilization Board, commencing October 1959, certain information, and that in return Mr. Goodwillie assured him that the Canadian Government would do anything it could to help David Schafer. David Schafer in his evidence statement put this matter as follows:

- "30. From this time [1959] onwards I communicated regularly with Mr. Goodwillie and other officials of the Agricultural Stabilization Board and subsequently the Canadian Dairy Commission, giving them all the information that I had obtained concerning the requirements of the various markets which I had been attempting to solicit, especially those of Mexico and Cuba. These officials, especially Mr. Goodwillie, always encouraged me to pursue my efforts in Latin America.
34. Throughout 1960, I kept in touch with Mr. Goodwillie of the Agricultural Stabilization Board and he indicated to me that he was keeping Mr. S. Clifford Barry, the Director General of Production and Marketing Branch informed of Schafer Bros. Ltd.'s activities. Mr. Goodwillie assured me that the Canadian Government would do everything to help me.
68. Throughout 1961, I kept Mr. Goodwillie informed of my activities in both Cuba and Mexico and he told me that he was keeping Mr. S. Clifford Barry and Mr. S.B. Williams, the Director General of the Production and Marketing Branch up to date. Before and after each trip to Cuba and Mexico, I met with or telephoned Mr. Goodwillie. I continued to do this until 1971....
84. Throughout 1962, I kept Mr. Goodwillie and other Canadian Government officials informed of my activities with respect to developing markets for Canadian milk powder in Cuba and in Mexico. Mr. Goodwillie continued to assure me that the Canadian Government would cooperate with me if a serious sale possibility ever presented itself.
91. Throughout 1963, I kept Mr. Goodwillie of the Agricultural Stabilization Board informed of my promotional efforts in Mexico, and he told me that Mr. Barry and Mr. S.B. Williams were being kept

advised. Mr. Goodwillie told me that I could count on his full cooperation concerning milk powder sales to Mexico.

97. Throughout 1964 I kept in close touch, as always, with Mr. Goodwillie at the Canadian Dairy Commission, and kept him informed of my attempts to break into the Mexican market in spite of stiff competition from the United States and other countries.
104. Throughout 1965, I gave Mr. Goodwillie full reports of my progress in Mexico and provided him with the list of names of the new officials at CONASUPO. He told me that he was passing on this information to both Mr. Barry and Mr. Williams, and he continued to assure me that the ASB would do everything to support my efforts to sell Canadian milk powder to Mexico.
113. During 1966, I kept Mr. Goodwillie, now Director of Marketing at the Canadian Dairy Commission, thoroughly informed, and Mr. Goodwillie assured me, as usual, that the Government would assist me in any way it could to sell milk powder in Mexico.
151. Throughout 1967, I kept Mr. Goodwillie informed of the sort of prices which CONASUPO was currently paying or willing to pay for milk powder, as well as the quantities it was likely to need in the near future and the quality requirements upon which it was now insisting. And Mr. Goodwillie told me to keep him informed of my progress."

Michel Choquette in his letter to Gilles Choquette dated July 25, 1977 put the matter this way:

"Although I am certain that it must be obvious by now that Mr. Whelan's conclusion is totally incorrect, I would like to stress once again the fact that throughout the 10 years which David Schafer devoted to developing his business relationship with CEIMSA and CONASUPO he was in constant touch with Mr. Goodwillie — first at the Agricultural Stabilization Board and later at the Dairy Commission. Before and after each trip to Mexico (and regularly between these trips) he wrote or otherwise communicated with Mr. Goodwillie to inform him of Schafer Bros.' intentions, to give him full and detailed progress reports, to provide him with the names of CONASUPO officials and advise him of any new appointments there, and to give him complete and up-to-date informa-

tion about the Mexican market situation. He discussed openly with Mr. Goodwillie the sort of prices which CONASUPO was willing to pay for milk powder, the quantities it was likely to need in the near future and the quality requirements upon which it was insisting."

Other than these statements by David Schafer and Michel Choquette there is no other oral or documentary support for the proposition. And Michel Choquette had no sources of information on the point other than David Schafer.

- (b) There was no evidence that Schafer Bros. Ltd. would not have discussed whatever it did discuss with Mr. Goodwillie at the Canadian Dairy Commission "but for" the assurances allegedly given by Mr. Goodwillie to David Schafer. In this connection, Schafer Bros. Ltd. was at all material times more inclined than other private exporters to depend upon government support in terms of information and sourcing. It was more central to its *modus operandi* to be speaking with Canadian Dairy Commission officials.
- (c) As to whether or not there was full cooperation by the Canadian Dairy Commission with Schafer Bros. Ltd. with respect to possibilities of sales to CONASUPO, there is at least no evidence of greater cooperation by Canadian Dairy Commission officials with any of Schafer Bros. Ltd.'s competitors. In this connection, it was suggested that Schafer Bros. Ltd. in fact received special cooperation not given to others in the financing of its January 1969 contract with CONASUPO, in that the Canadian Dairy Commission varied its announced policy and practice of requiring 2¢ per pound deposit against the promised subsidy before releasing its stocks. This was a minor matter, however. Other instances of a similar special cooperation by the Canadian Dairy Commission are its cooperation with Granby Co-op in its October 1967 pricing arrangement, its 1¢ per pound export guarantee in connection with its large 1968 sale to Eastern Townships Produce Ltd. for resale to the European Consortium, and in connection with a transaction with Dominion Dry Milk in November 1969. There was also insufficient evidence that the transfer of the Chilean Letter of Credit, to assist Schafer Bros. Ltd., was an unusual favour as argued in the so-called Joint Submission of the other parties recognized at this Commission.

From a consideration of all the evidence in respect to this Allegation, the finding is that this Allegation is not supported by the evidence. Any information given by Schafer Bros. Ltd. to Canadian Dairy Commission officials was given on a voluntary basis and any

assurances given by the Canadian Dairy Commission were of a general nature given to all traders. It may again be relevant here to note that it was important to Mr. David Schafer's philosophy of how to deal in this export market, to associate with and rely on government officials to a greater extent than other private traders in the market.

The co-operation that Canadian Dairy Commission officials gave to Schafer Bros. Ltd. cannot be categorized otherwise than as full cooperation, no different in any material way from that afforded to all other private traders.

In making this finding I do not suggest that the Canadian Dairy Commission should not have been more flexible in some of its policies vis-à-vis all private traders, as for example in the matter of its financial arrangements generally.

4. *Allegation A.1(b)(i)*

Allegation A.1 (b) (i) is as follows:

"The C.D.C. used information supplied to it by Schafer Bros. Ltd. at the request of the C.D.C., which information had been obtained by Schafer Bros. Ltd. in the course of making its promotional efforts and investment."

As noted above, David Schafer stated that he supplied information to Mr. Goodwillie regularly, commencing in 1959, and that he received assurances from Mr. Goodwillie that the Canadian Dairy Commission would assist Schafer Bros. Ltd. as much as possible in making sales of skim milk powder to CONSAUPO. David Schafer said that he gave the information willingly and voluntarily.

As to specifics regarding the "information" given by David Schafer to Mr. Goodwillie, David Schafer said that it was not necessarily information that could not have been obtained elsewhere or later. He said that he gave specific tender information, and specific and general market intelligence to Mr. Goodwillie from time to time. Specifically, for example, he said that he was the first to learn that the United States would not be tendering on the large 1969 contract.

There is no evidence of any specific reliance by Canadian Dairy Commission officials on any information given them by the Schafers. Dr. Barry, Chairman of the Canadian Dairy Commission from 1966 to 1973, specifically rejected the assertion contained in Allegation A.1(b)(i).

The evidence is that all Canadian private traders exchanged information with Canadian Dairy Commission officials about all world markets in which they were interested, including the Mexican market.

There is, further, no evidence that any information supplied by Schafer Bros. Ltd. to Canadian Dairy Commission officials was used in any way against Schafer Bros. Ltd. There is only the statement of George Schafer that he suspected such was the case.

Dr. Barry testified that in his view the Canadian Dairy Commission ought not to use information of a trade secret nature, received in confidence from a trader, in a manner contrary to the interest of that trader, as for example to exclude the trader from a deal. Nowhere in the evidence of David Schafer does he say that he or Schafer Bros. Ltd. gave Canadian Dairy Commission officials any information of that type.

The finding in respect of this allegation is that whatever information Schafer Bros. Ltd. supplied to Canadian Dairy Commission officials was not information that was not otherwise available to it. It was information of a type that other private traders also from time to time communicated to Canadian Dairy Commission officials, and that Canadian Dairy Commission officials in turn exchanged with such private traders. It might colloquially be referred to as general street knowledge in the market. As a consequence, there is also no evidence that Canadian Dairy Commission officials used this information in any particular way, let alone to the detriment of Schafer Bros. Ltd.

5. *Allegation A.1(b)(ii)*

Allegation A.1(b)(ii) is as follows:

"The C.D.C. took unfair advantage of its control over large stocks of Canadian skim milk powder and of its power to determine and grant export subsidies, and not so as to limit the generality of the foregoing, more specifically in that:

- (a) on April 26, 1968, the C.D.C. refused to provide 400 metric tons of high heat powder with a production date of 90 days or less, thereby causing Schafer Bros. Ltd. to be unable to be awarded a contract, and
- (b) on June 26, 1968, the C.D.C. refused to provide 330 metric tons of low heat powder, thereby causing Schafer Bros. Ltd. to be unable to be awarded a contract."

The only evidence touching on the general words of this allegation was that given by George Schafer (transcript pp. 2569-74) to the effect that Schafer Bros. Ltd. had no evidence that did not also relate to other, more specific, allegations, viz. Allegations A.2, A.3 and A.5.

The underlined portion of this allegation was added to the Statement at the specific request of counsel for Schafer Bros. Ltd. and Michel Choquette on January 14, 1980. Said counsel subsequently, however, in written form (see Exhibit 54) informed as follows:

"My clients have informed me that they have no evidence to support the following amended allegations, I.A.1(b)(ii)(a) and I.A.1-(b)(ii)(b)."

As a consequence there is no evidence to support this allegation.

6. Allegation A.1(b)(iii)

Allegation A.1(b)(iii) is as follows:

"The C.D.C. falsely represented that CONASUPO insisted upon dealing directly with the C.D.C.; and in fact in 1967, the C.D.C. proposed a direct agency to agency agreement with CONASUPO and Mr. S.C. Barry, then Chairman of the C.D.C flew to Mexico in Oct. 1967 in order to negotiate such a direct agreement."

The main documents regarding the origin and rationale of the direct dealing between the Canadian Dairy Commission and CONASUPO appear in Exhibits 12 and 12A at pages 94-97, 103-104, 126-134, 138-139, 149, 464, 1739, 606-609 and 1740.

The main oral testimony was given by David Schafer and Dr. Barry, and also in the course of the interviews held in Mexico City. David Schafer had no personal knowledge; his evidence consisted of inferences or suspicions he had drawn from certain documents and conclusions he drew from conversations with certain Mexican persons.

The evidence in essence is as follows:

(a) Commencing apparently with the election of the new government in Mexico in the mid-1960's, Mexico became increasingly interested in making its government purchases on a direct government-to-government basis. This general policy affected a wide range of agencies and products including CONASUPO and its purchases of skim milk powder, and extended to all supplying countries including Canada. It appears to have arisen from an interest in ensuring a reliable supplier and obtaining the best possible price. (It further appears that although until 1971 Mexico had no wish to exclude the private sector in Canada from attempting to sell to it, the policy of direct government-to-government dealing became so important to Mexico with its new government in 1971 that, as was stated by one of the persons interviewed in Mexico City, if the Canadian Dairy Commis-

sion had insisted on selling skim milk powder only to private exporters for resale, and had not been willing to sell direct to CONASUPO, CONASUPO would have declined to buy Canadian skim milk powder).

- (b) By 1967, the first full year of operation of the Canadian Dairy Commission, Canadian skim milk powder surpluses had risen to uncomfortable levels. The Canadian Dairy Commission was concerned about the effectiveness of the private sector, acting alone, in selling those surpluses abroad. The potential significance to Canada of the escalating Mexican demand for skim milk powder was also becoming known.
- (c) In August, 1967, the Haitian Ambassador to Canada advised Mr. S.B. Williams, then Deputy Minister of the Department of Agriculture, that a Mr. Peniche, who was a CONASUPO official responsible for quality standards, wished to contact Canadian authorities regarding skim milk powder.
- (d) On September 22, 1967, Mr. Rodriguez Licea of CONASUPO advised Canadian government officials that he would like to visit Canada to explore the possibility of purchasing Canadian skim milk powder, specifically in respect to an imminent order of 20,000 tons. In this connection, Canadian Dairy Commission officials indicated by internal government memorandum that they did not wish the CONASUPO representatives to visit private sector representatives in Canada. They wished to have the visits paid for out of the Canadian Dairy Commission's budget and not out of the budget of the Department of Industry, Trade and Commerce because if it were paid out the latter, private sector representatives would have to be invited to visit with the CONASUPO officials.
- (e) In October, 1967, Dr. Barry and Mr. Goodwillie of the Canadian Dairy Commission visited CONASUPO in Mexico. Dr. Barry testified that "...we told CONASUPO that if they wished to deal directly we would be prepared to do so."
- (f) In January, 1968, the Canadian Dairy Commission bid directly to CONASUPO on its large call for tenders, having been invited by CONASUPO to make such a bid. The bid was not successful, nor was another bid made by the Canadian Dairy Commission to CONASUPO in 1969. The Canadian Dairy Commission did not in fact make a sale of skim milk powder to CONASUPO until 1971, when CONASUPO insisted on dealing exclusively with the Canadian Dairy Commission for its supplies of skim milk powder from Canada.

It is fruitless in the circumstances to seek to identify the source of the first initiatives in establishing direct contact between CONASUPO and the Canadian Dairy Commission. CONASUPO's growing interest in direct government-to-government dealing coincided with a growing concern by the Canadian Dairy Commission over how to ensure maximum export sales of the surplus skim milk powder and thereby to reduce the cost of the price support program.

It is true that Canadian Dairy Commission officials took some pains to convince other, sometimes sceptical, Canadian Government officials that the initiative for direct dealing had come from CONASUPO and that CONASUPO insisted on such. It also appears that the Canadian Dairy Commission hoped at the time that it would become the sole Canadian vendor of Canadian skim milk powder to CONASUPO. These communications and hopes can be questioned, but they were without material consequence so far as Schafer Bros. Ltd. and other private Canadian traders were concerned. It is clear that the Canadian Dairy Commission was motivated solely by a concern to sell its surpluses and thereby to minimize the costs to the Canadian public of the price support program.

7. *Allegation A.1(b)(iv)*

Allegation A.1(b)(iv) reads as follows:

"The C.D.C. did not reveal to Schafer Bros. Ltd. its intentions to take over the market for the sale of Canadian skim milk powder to CONASUPO until this taking over took place in 1971-1972."

This allegation was added to the draft statement of allegations at the request of counsel for Schafer Bros. Ltd. in the early stages of the hearings, although it was not made in the pre-Inquiry writings of Michel Choquette. Nor does it appear to add anything to the Inquiry. Counsel for Schafer Bros. Ltd. made no submissions directed particularly to this allegation.

The allegation appears to have been inspired by the disclosure, in the documents filed by Commission counsel at the commencement of the hearings, that Dr. Barry and Mr. Goodwillie had held meetings with CONASUPO in October 1967. This fact had not previously been known to the Schafers or to Michel Choquette, although the fact that the Canadian Dairy Commission submitted a bid to CONASUPO in January, 1968 was made known to David Schafer by the Canadian Dairy Commission at the time.

The other apparent reason for making this allegation was that it was believed by Schafer Bros. Ltd. that a deliberate and voluntary act by the Canadian Dairy Commission caused the exclusion of the Canadian private sector from the CONASUPO busi-

ness as of 1971. This was simply not the case, as has been referred to above and as is also dealt with below in connection with Allegation A.1(b)(vi).

8. *Allegation A.1(b)(v)*

Allegation A.1(b)(v) reads as follows:

"The C.D.C. on several occasions was deliberately vague in its representations to Schafer Bros. Ltd. concerning availability of supplies and the amount of subsidy to be given."

This allegation was also added at the request of counsel for Schafer Bros. Ltd., but again, after all the evidence was adduced and written submissions were requested of all counsel, counsel for Schafer Bros. Ltd. made no submissions directed particularly to this allegation.

The evidence disclosed that the Canadian Dairy Commission issued circulars on a regular basis and distributed them to private traders spelling out its policy regarding payment of subsidies.

The evidence also established that there is a small time lapse between the receipt of skim milk powder by the Canadian Dairy Commission from the manufacturers and the recording of such skim milk powder in the inventory records of the Canadian Dairy Commission.

Use of the word "deliberately" in this allegation was presumably intended to connote malice or irresponsibility of some sort on the part of the Canadian Dairy Commission, rather than referring to vagueness in circumstances where the Canadian Dairy Commission was simply unable to be specific or to give a definite future commitment.

There is no evidence at all to substantiate an allegation of any such deliberateness. Nothing can be inferred from the documents, and both David Schafer and George Schafer testified that they had no evidence or information in this respect other than what might appear from the documents.

Accordingly, there is no evidentiary basis for this allegation.

9. *Allegation A.1(b)(vi)*

Allegation A.1(b)(vi) reads as follows:

"In 1971, the C.D.C. officially took over the market for the sale of Canadian skim milk powder to CONASUPO, thereby making it impossible for Schafer Bros. Ltd. to benefit from the 13 years of investment and promotional efforts which it had spent in the development of this market."

This is a further allegation that was added early in the course of the inquiry at the request of counsel for Schafer Bros. Ltd., but again, in their submissions at the conclusion of evidence such counsel did not make any submission directed in particular to this allegation.

The last half of this allegation as framed, following the comma, consists merely of argumentative words.

It is clear that in early 1971, probably as a result of the policy of the new administration in Mexico, CONASUPO insisted upon dealing exclusively on a government-to-government basis for its growing requirements for skim milk powder imports. An internal memorandum in the Department of Industry, Trade and Commerce dated May 5, 1971 records that CONASUPO had "formally advised the Canadian Dairy Commission that it is now their policy to negotiate directly with foreign governments for all their requirements." (see Document 583, Exhibit 12). The existence of this new policy in the spring of 1971 was confirmed in the course of the interviews held by the Commission of Inquiry in Mexico City, where it was also indicated that had the Canadian Dairy Commission not agreed to sell directly to CONASUPO, CONASUPO would in all likelihood have purchased its skim milk powder from one of Canada's competitors.

(The documentary evidence indicated that in April, 1972, CONASUPO may have invited price quotations from one or two private Canadian traders (not including Schafer Bros. Ltd.) for a possible sale of skim milk powder, but the evidence was not clear nor was it explained by anyone. It may have been a small or specialized order, or may even have resulted from some confusion at CONASUPO.)

In view of CONASUPO's position in the spring of 1971, the Canadian Dairy Commission discontinued the practice it had followed for the prior two years, of issuing a special trade circular announcing the export subsidy level for Canadian sales of skim milk powder to CONASUPO and also the terms and conditions upon which the Canadian Dairy Commission itself would supply skim milk powder for such sales. Dr. Barry's evidence was that by not issuing such a circular in 1971 or subsequently, the Canadian Dairy Commission thereby discontinued making any export subsidy or stocks available for such sales. He said that although no special announcement was made to this effect, the private trade understood the significance of discontinuing the circulars.

The first sale of skim milk powder by the Canadian Dairy Commission to CONASUPO was evidenced by the contract dated May 14, 1971 to sell 10,000 metric tons (Exhibit 12, pages 589-596).

David Schafer in his evidence said that his reason for making this allegation was his belief that it was

the Canadian Dairy Commission, and not CONASUPO, that was responsible for excluding the private sector altogether in the spring of 1971 from the sale of Canadian skim milk powder to CONASUPO. Mr. Schafer's belief that this was so resulted, he said, from his having been told by the Director General of CONASUPO that the Canadian Dairy Commission had initiated the talks in respect to arrangements between the two government agencies. Dr. Barry's evidence is to the contrary, and in view of his evidence, the internal Department of Industry, Trade and Commerce memorandum dated May 5, 1971 and the interviews held in Mexico City, it appears that Mr. Schafer's belief is not well founded.

The taking over of the CONASUPO business by the Canadian Dairy Commission clearly was not an exclusionary act of the Canadian Dairy Commission. It resulted from Mexican government policy, a fact corroborated unequivocally by the interviews with the witnesses in Mexico. Judging from complaints made by Ronald A. Chisholm Ltd. and others in 1971 and 1972 about the trading activities of the Canadian Dairy Commission with CONASUPO, however, it is evident that Schafer Bros. Ltd. was not alone in either feeling hurt or in not understanding the reasons for the new trading relationship that was established in 1971 between the Canadian Dairy Commission and CONASUPO.

I do not deal here with the argumentative words "thereby making it impossible for Schafer Bros. Ltd. to benefit from the 13 years of investment and promotional efforts which it had spent in the development of this market", because the facts assumed by that statement are dealt with elsewhere in this Report.

10. *Allegation A.2*

Allegation A.2 reads as follows:

"In January 1968 the C.D.C. prevented Schafer Bros. Ltd. from taking advantage of the first opportunity to make a major sale of Canadian skim milk powder to CONASUPO by:

- (a) refusing to make its stocks available to Schafer Bros. Ltd.,
- (b) refusing to cooperate with respect to subsidies and financial arrangements,
- (c) not indicating its intention of competing directly with Schafer Bros. Ltd. for a CONASUPO tender until January 24, 1968, and
- (d) making a direct offer itself to CONASUPO involving C.D.C. stocks and benefiting from subsidies and financial

arrangements which the C.D.C. had accorded to itself."

It should be noted that subparagraphs (c) and (d) were added at the request of counsel for Schafer Bros. Ltd. during the Inquiry.

The evidence showed that until evidence was adduced at this Inquiry David Schafer believed that Schafer Bros. Ltd. was the only private firm in Canada to be invited by CONASUPO to bid on this contract. This belief appears to have originated in Mr. Schafer's lack of awareness of the presence of other private Canadian exporters doing business in Mexico at the time, in his belief that among Canadian exporters he was uniquely known and trusted by certain CONASUPO officials, and in the Canadian Dairy Commission's failure to show him copies of requests or offers by other private Canadian traders to buy supplies from the Canadian Dairy Commission in connection with this tender.

The evidence established that other private Canadian traders received invitations from CONASUPO to bid for the sale to it of skim milk powder under the January 1968 tender. As to this, Dr. S.C. Barry and Mr. Goodwillie said at the time that at least three or four private Canadian traders had received invitations from CONASUPO, one of whom was Granby Co-op. There is in evidence a written invitation to Granby Co-op care of Benelol (its Mexican agent) which, at the Inquiry, caused David Schafer to doubt what he had been told by certain persons who were CONASUPO officials at the time. The evidence also established that Mr. Rodriguez Licea advised the Canadian Dairy Commission, shortly before Schafer Bros. Ltd. received its invitation from CONASUPO to tender, that all registered producers and suppliers were being contacted regarding this January 1968 tender. The evidence also established that Canadian skim milk powder had been exported to Mexico by others since at least the early 1960's, according to official government statistics of both Mexico and Canada. These statistics did not identify any particular traders in such purchase and sale of Canadian skim milk powder but such statistics did establish that Mexicans were familiar with the characteristics and availability of Canadian skim milk powder since the early 1960's.

The witnesses interviewed in Mexico, and Messrs. Bishop and Pariseault, confirm that sales of Canadian skim milk powder were made by other Canadian private traders to CONASUPO in the 1960's.

The evidence established that the Canadian Dairy Commission informed Schafer Bros. Ltd. that it was making a direct offer to CONASUPO in response to the January 1968 invitation to tender from CONASUPO and that it would not make its stocks available to Schafer Bros. Ltd. for such tender

because, as stated, if CONASUPO accepted both the Canadian Dairy Commission's tender and the tender of Schafer Bros. Ltd., the Canadian Dairy Commission would not have had sufficient skim milk powder to fulfil the requirements of both contracts.

The evidence in respect to the discussions between Schafer Bros. Ltd. and the Canadian Dairy Commission with respect to this do not support the allegation. In fact, the evidence seems to establish that the only offer that Schafer Bros. Ltd. made to the Canadian Dairy Commission to buy inventory to fulfil the requirements of this tender to CONASUPO was conditional upon CONASUPO accepting the Schafer Bros. Ltd. tender.

There is no evidence that the Canadian Dairy Commission discriminated against Schafer Bros. Ltd. or any other private trader with respect to subsidies and financial arrangements. The Canadian Dairy Commission treated all private traders alike.

The evidence establishes that the Canadian Dairy Commission did not indicate to Schafer Bros. Ltd. its intention to make a direct bid or to make a direct tender for this January 1968 sale to CONASUPO until sometime in January. It was not, however, required to do so. While there was no statutory or other duty on the Canadian Dairy Commission to disclose its intention to make a direct bid itself to CONASUPO, at the same time there is no evidence to suggest that the Canadian Dairy Commission deliberately kept such intention a secret.

Subparagraph (d) of the allegation, namely, that by making a direct bid to CONASUPO the Canadian Dairy Commission benefitted from subsidy and financial arrangements which it accorded to itself, is in substance correct but irrelevant.

It should be noted that the bid price made by the Canadian Dairy Commission to CONASUPO with respect to this 1968 contract was at 10.24¢, whereas the Canadian Dairy Commission was only offering a subsidy such as would give private exporters a subsidized price of 13.5¢ per pound. The Canadian Dairy Commission could have increased its subsidy payable to private traders by 3.26¢ per pound and still not have cost the fund or the taxpayers any more net dollars than would have been the case had the Canadian Dairy Commission's bid been accepted.

Counsel for Schafer Bros. Ltd. in his submissions in respect to this allegation, describes Dr. Barry's conduct in connection with the January, 1968 tender as "deceitful" and "dishonest", specifically with reference to the advice that Dr. Barry gave to Ministers that CONASUPO wished to deal directly with the Canadian Dairy Commission. The employment of these words is entirely unwarranted and improper.

11. *Allegation A.3*

Allegation A.3 reads as follows:

In August 1968 the C.D.C. sold a large quantity of skim milk powder to competitors of Schafer Bros. Ltd. at a price considerably lower than had been offered unsuccessfully by Schafer Bros. Ltd. to the C.D.C. for skim milk powder in January 1968, and considerably lower than was subsequently offered to Schafer Bros. Ltd. in October, 1968. In fact some of the powder which was actually delivered by the C.D.C. constituted fresh 1969-produced powder. The C.D.C. thereby prevented Schafer Bros. Ltd. for almost two years from competing effectively in the sale of skim milk powder to certain foreign countries."

The background of this so-called consortium transaction was described by Timothy Chisholm of Ronald A. Chisholm Ltd. as follows:

"In 1968, the world market in skim milk powder was in a depressed state, and the world price declined steadily from January 1968 into the summer of that year.

"By the summer of 1968, the Canadian surplus, which was known to be substantial, was one of the major factors in contributing to the then depressed state of the market.

"At that time, Ronald A. Chisholm Limited was dealing in Europe primarily with Van den Bergh, a major European trader in milk powder and other commodities. At the same time Eastern Townships Produce Ltd. of Sherbrooke, Quebec (a competitor of Ronald A. Chisholm Limited), was dealing in Europe primarily with Ecoval, another major European milk trader based in Brussels.

"By the summer of 1968, both Van den Bergh and Ecoval felt that the market would not recover until the Canadian surplus was dealt with, and accordingly each approached Ronald A. Chisholm Limited and Eastern Townships Produce Ltd. with a view to our participating in a consortium which would purchase the entire Canadian surplus.

"On or about July 30, 1968, Dean Bishop of Eastern Townships Produce Ltd., Peter Van Wauyenberge of Ecoval and Mr. Van Ballegooijen of E.A. Ballegooijen & Zn. N.V. (who were to finance the consortium operation), and I met with Dr. Clifford Barry and D.B. Goodwillie of the Canadian Dairy Commission in Ottawa. At this meeting, we offered on behalf of the consortium to pur-

chase the entire Canadian surplus of skim milk powder, without regard to the age of the powder.

"During the same meeting, negotiations took place with regard to the purchase price, the commitment by the consortium to take certain amounts of powder within certain limited times, and related matters. Eventually, an agreement was reached, and this agreement was between the Canadian Dairy Commission and Eastern Townships Produce Ltd. (on behalf of the consortium)...

"The contract called for the purchase by the consortium of 35,000 metric tons of skim milk powder, which I do not believe was the entire surplus which the Canadian Dairy Commission had in store at that time, but which was the maximum amount which the Commission was prepared to sell to the consortium at that time. The price agreed upon was 4¢ per pound, which was the approximate world price at that time.

"The purchase of this large portion of the Canadian surplus had the expected effect on the world market price of skim milk powder, in that the world price gradually started to increase when it became known in the trade that the major proportion of the Canadian surplus had been taken off the market."

The evidence confirmed that the skim milk powder that was sold by the Canadian Dairy Commission to Eastern Townships Produce Ltd. on August 12, 1968 for re-sale to the consortium in export markets was not the same powder to which either the January, 1968 or October, 1968 proposals pertained. The powder that was sold in the August, 1968 consortium sale was 1967 powder with perhaps a *de minimis* quantity of fresh powder that might have been required to complete particular shipments.

A restriction was attached to this sale; the Canadian Dairy Commission agreed not to sell skim milk powder below 5¢ a lb. for the next eight months for export outside North and South American without giving Eastern Townships Produce Ltd. the right of first refusal.

In the result, there is therefore no basis for this allegation insofar as it alleges that the Canadian Dairy Commission offered Schafer Bros. Ltd. in October, 1968 skim milk powder at a price higher than was offered to Eastern Townships Produce Ltd. because, as stated, the two proposals related to skim milk powder of different age and quality. Apparently Schafer Bros. Ltd. did experience some difficulties selling fresh skim milk powder for the following two years in the European market, but that is no criticism

of the Canadian Dairy Commission in making this sale to Eastern Townships Produce Ltd. for re-sale to the consortium.

The pre-Inquiry writings of Michel Choquette treated this so-called consortium sale transaction as a substantial issue insofar as Schafer Bros. Ltd. and David Schafer were concerned. As a result of the evidence produced and given at the Inquiry, however, this allegation ceased to have real importance or significance to David Schafer or Schafer Bros. Ltd. In fact, David Schafer testified (Transcript p. 2776) that it was not his intention to make this allegation.

This whole matter seems strange and unsupportable in that once again, shortly after commencement of the public hearings, counsel for Schafer Bros. Ltd. requested that the allegation as framed by Commission counsel on the basis of Michel Choquette's writings be amended by adding the words underlined above in the allegation. His request was granted.

This is especially unsupportable in view of the fact that David Schafer in evidence stated that he made the amended allegation, as to the inclusion of fresh 1969 powder, because a trucker, a Mr. Rouleau in Montreal, had told him that fresh 1969-produced powder had been delivered as part of this so-called consortium purchase. That is the sole basis David Schafer had for amending this allegation to include those words. As to any fresh powder being included in such sale, Dr. Barry stated that a bit of fresh powder may possibly have been included to complete shipments under the August 12, 1968 contract, but that obviously only an insignificant amount of fresh powder, at most, was included.

Not relevant to the allegation, but as a matter of some other interest, the amount of public funds expended or lost in connection with the powder sold to Eastern Townships Produce Ltd. was approximately \$12,000,000, not including storage, finance or other costs.

12. Allegation A.4

Allegation A.4 reads as follows:

"In the spring of 1969, the C.D.C. made it unnecessarily difficult for Schafer Bros. Ltd. to fill its first order from CONASUPO by:

- (a) repeatedly giving false and misleading information to Schafer Bros. Ltd. as to the availability, location and the heat treatment and bacteria characteristics of the skim milk powder available from the C.D.C. for the transaction,
- (b) refusing to cooperate concerning financial arrangements, and

- (c) causing Schafer Bros. Ltd. to incur additional laboratory, manufacturing, and transportation costs in order for them to be able to fulfil CONASUPO's contractual requirements."

On February 3, 1969 Schafer Bros. Ltd. entered its first (and only) contract with CONASUPO for the supply of skim milk powder. It was a contract for 450 tons of high-heat powder and 320 tons of low-heat powder, all to have a DMC count below 75 million.

The essence of this allegation seems to be a belief on the part of David Schafer that the Canadian Dairy Commission deliberately sought to frustrate the efforts of Schafer Bros. Ltd. to complete the shipments according to this contract.

Michel Choquette's writings set out the factual basis of this allegation in this way:

- (a) "...David Schafer would not have made a commitment to CONASUPO if Mr. Goodwillie had not said that the Commission could supply Schafer Bros. — i.e. if he had not said that supplying high heat powder would present no problem and that Schafer Bros. could test as many lots as necessary". (Exhibit 6, Vol. VI, p. 120)
- (b) Schafer Bros. Ltd. "... was intentionally misled by the Dairy Commission as to the location and availability of certain lots of skim milk powder" (Exhibit 6, Vol. IX(G), pp. 3-4; [at p.16 it is alleged that it may have been "gross negligence"]; Exhibit 6, vol. IX(C), pp. 6-7)
- (c) "... thus obliging them to spend an unnecessary amount of time looking elsewhere for supplies, (and causing) them to be late with their deliveries on what was their first sale to CONASUPO, thus seriously jeopardizing their relationship with a customer they had worked 8 years to secure..." (Exhibit 6, Vol. IX(G), p. 16)
- (d) The Canadian Dairy Commission caused them to pay more than they had been led to rely on for both the high heat and low heat portions of the order. (Exhibit 6, Vol. IX(G), pp. 18-19; Exhibit 6, Vol. VII, pp. 32-33, 47)
- (e) Although the Canadian Dairy Commission's records of its own inventory seemed to be disorganized, and deficient regarding heat treatment specifications, thereby causing loss to Schafer Bros. Ltd., the Canadian Dairy Commission repeatedly gave information regarding the DMC (bacteria) counts that was false according to records it did have. (Exhibit 6, Vol. IX(C), pp. 6-7; Exhibit 6, Vol. IX(G), pp. 19-20 And see: Exhibit 6, Vol. VII, pp. 31-57; Exhibit 6, Vol. VI, p. 122 ["it is... a question of whether

the misrepresentation. . . was innocent, negligent or fraudulent”])

- (f) Generally, through matters of financing, supplying information, and granting access to inventory lots for sampling, “. . . the Dairy Commission made it unnecessarily difficult for the Schafers to obtain supplies from government stocks for Schafer Bros.’ sale to CONASUPO”. (Exhibit 6, Vol. IX(G), p. 16; Exhibit 6, Vol. VI, pp. 6, 106-124; Exhibit 6, Vol. VII, pp. 47-49, 53-56)
- (g) In dealing with Schafer Bros. Ltd. in connection with its attempts to fill the small 770 ton order in 1969, was the Canadian Dairy Commission seeking to prejudice the competitive position of Schafer Bros. Ltd. with respect to the large annual tender calls from CONASUPO, including the very large tender call from CONASUPO that was expected imminently? (Exhibit 6, Vol. 7, p. 51; Exhibit 6, Vol. 6, pp. 123-124)

The factual basis of David Schafer’s complaint in this respect is contained in his evidence as follows:

“On January the 8th, I went to Ottawa to meet with Mr. Goodwillie and inquired about the availability of such supplies as well as the subsidy. I informed Mr. Goodwillie that once again CONASUPO required powder no more than 90 days old and with a D.M.C. Count not exceeding 75,000,000.

“Mr. Goodwillie asked me if I was certain that CONASUPO would not accept a D.M.C. Count of 200,000,000 and whether it was absolutely essential that the 320 tons be low heat as opposed to high heat or medium heat.

“I answered that I believed it was important to offer the Mexicans exactly what they specified.

“Mr. Goodwillie informed me that since the Commission kept a record of the D.M.C. Count of the lots it purchased from producers, and that several producers regularly delivered powder with a D.M.C. Count lower than 75,000,000 to the C.D.C., Schafer Bros. would be able to fulfil Mexico’s requirements in this respect.

“As far as low and high heat were concerned, however, Mr. Goodwillie informed me that the Commission was not obliged to test for heat treatment, since its purchasing regulations did not include a whey protein nitrogen analysis.

“Mr. Goodwillie, however, stated that the Commission would be prepared if and when

Schafer Bros. actually made the sale, to indicate which lots of powder were most likely to be high heat and which were most likely to be low heat.

“Mr. Goodwillie stated that Schafer Bros. would have no trouble finding sufficient high heat powder in the Commission’s stocks, though finding enough low heat powder could present a problem.

“He stated that Schafer Bros. would have to employ at its own expense, a sampling agency and a private laboratory to double-check the lots for heat treatment and that Schafer Bros. would probably be obliged to commission a private manufacturer to produce most of the low heat powder custom-made, which would cost us a little more.

“Mr. Goodwillie informed me that the C.D.C. would supply such powder at 6¢ per pound (subsidized price) ex-warehouse Montreal or Toronto, and that this price would apply to all powder exported for this order, whether it were purchased from C.D.C.’s stocks or from private manufacturers.

“On January the 9th, 1969, Schafer Bros. Ltd. contacted J.G. Morazain Co. Ltd., a private manufacturer’s agent, and asked Mr. Morazain to make preliminary inquiries concerning the availability of custom-made production of low heat powder.”

The evidence established that, at the time, the Canadian Dairy Commission did not have an adequate record system, so as to enable it to provide accurate information regarding the D.M.C. Count of its inventory of skim milk powder.

Nor did the Canadian Dairy Commission have any inventory records showing which lots of its powder were high heat or low heat, because the Canadian Dairy Commission purchasing regulations did not require a whey-protein-nitrogen test which would have identified the heat treatment characteristics of the powder.

The Canadian Dairy Commission officials, as for example Mr. Goodwillie, did, however, know in a general way which of the manufacturers produced high heat and low heat skim milk powder and, in that general way, indicated to Schafer Bros. Ltd. who those manufacturers were and where the supplies might be found.

The evidence established that there is no basis for David Schafer’s contention that the Canadian Dairy Commission guaranteed him a supply of high-heat powder. The documents in evidence, in fact, include a telex dated January 23, 1969, from Mr. Marcellus of

the Canadian Dairy Commission to Schafer Bros. Ltd. (see Document 277, Exhibit 12, Vol. 1) wherein Mr. Marcellus states that the Canadian Dairy Commission does not give any guarantee of the availability of high-heat skim milk powder from Canadian Dairy Commission stocks.

Therefore, there is no basis for allegation A.4(a).

As to subparagraph (b) of the allegation, the complaint of Schafer Bros. Ltd. relates to the 2¢ deposit against proof of export of skim milk powder from Canada and the question as to whether the Canadian Dairy Commission should have accepted an assignment of CONASUPO's Letter of Credit.

The evidence establishes that in respect of the 2¢ deposit, the Canadian Dairy Commission waived this requirement at the request of CONASUPO. In respect of the Letter of Credit, David Schafer admitted on cross-examination that the Canadian Dairy Commission was justified in refusing to accept the assignment, because if the Canadian Dairy Commission had done so the effect would have been for the Canadian Dairy Commission to give a guarantee as to the availability of supplies that it had already expressly refused to give.

There is likewise no basis for subparagraph (c) of the allegation. As stated above, the Canadian Dairy Commission did not keep records respecting the heat treatment characteristics of its inventory. Insofar as Schafer Bros. Ltd. was required to go to sources other than the Canadian Dairy Commission for supplies to fulfill this CONASUPO contract, it, like any other private trader, was required to pay the laboratory costs, transportation costs and any other cost associated with such purchases.

It is worth noting that Rodriguez Ayala, in the interview with the Commissioner at Mexico City in the presence of certain counsel, all having been invited, and Michel Choquette, said that he and Rodriguez Licea had discretionary authority to accept small tenders. He said that this 770 ton tender acceptance (a small tender) was, so to speak, for them a test case in respect to Schafer Bros. Ltd. to see if Schafer Bros. Ltd. could perform a contract entered into, and if so, Schafer Bros. Ltd. would be put on the list of persons to be invited to submit offers on large tender calls.

13. Allegation A.5

Allegation A.5 reads as follows:

"In the spring of 1969, the C.D.C. prevented Schafer Bros. Ltd. from winning a contract with CONASUPO for the supply of 25000 tons of skim milk powder by:

- (a) giving false and misleading information to Schafer Bros. Ltd. regarding the pay-

ment of export subsidies to Canadian firms dealing through foreign agents,

- (b) refusing to make its stocks available to Schafer Bros. Ltd. and then agreeing to make its stocks available to other Canadian exporters, and
- (c) discouraging Schafer Bros. Ltd. by announcing its intention of making a direct offer by itself to CONASUPO, involving C.D.C. stocks and benefitting from subsidies and financial arrangements which the C.D.C. would accord to itself."

The essence of this allegation is contained in subparagraph (a). Subparagraphs (b) and (c) of the allegation, underlined, were added to the Statement of Allegations at the commencement of the public hearings at the request of counsel for Schafer Bros. Ltd.

Mr. David Schafer, Dr. Barry and Mr. Timothy Chisholm gave oral evidence in respect to this matter and there was substantial documentary evidence, all of which are referred to in Appendix 11 to this Report.

The evidence established that it was known early in 1969 to all Canadian private traders and to the Canadian Dairy Commission that CONASUPO was about to invite offers for the supply of 25,000 tons of skim milk powder.

Thomas P. Gonzalez, an agent with offices in both Los Angeles and Mexico City, was a long-established agent and was known to be successful in respect to contracts generally with CONASUPO.

Thomas P. Gonzalez and David Schafer had certain conversations in early 1969. David Schafer stated that Mr. Gonzalez offered to act for him on two occasions in connection with the forthcoming CONASUPO invitation for tenders but that he, David Schafer, declined to join with him in any business relationship.

David Schafer then contacted Dr. Barry, the Chairman of the Canadian Dairy Commission, and stated in his evidence that the following took place:

"On March the 31st, 1969, I telephoned Mr. Barry, who was staying at the Hotel Ritz in Mexico City.

"I made this call from the office of Mr. T.F. Harris, Commercial Counselor at the Canadian Embassy in Mexico, in the presence of Mr. Harris, and a local Commercial Officer, Mr. Fidencio Arguelles.

"I told Mr. Barry of the offer which I had received from Mr. Thomas P. Gonzalez.

"Mr. Barry told me that the Canadian Dairy Commission would pay an export subsidy only to a Canadian exporter dealing directly with Mexico.

"Subsequently, Mr. Thomas P. Gonzalez contacted me once again and, believing that I had Mr. Barry's support in this matter, I told Mr. Gonzalez that Schafer Bros. Ltd. refused to become a purchasing agent in Canada for an American firm selling directly to CONASUPO."

In further elaboration of his evidence David Schafer stated: "I asked Mr. Barry not to give a subsidy when it is not a Canadian seller. That was what I asked and Mr. Barry accepted..." (Transcript p. 552)

The fact of the matter is that what subsequently transpired was that Ronald A. Chisholm Ltd., a Canadian trader, supplied the Canadian skim milk powder to CONASUPO under the contract as eventually awarded.

Timothy A. Chisholm, President of Ronald A. Chisholm Limited, in evidence stated as follows:

"In 1969, we received an inquiry from Thomas P. Gonzalez Corporation for 25,000 metric tons of skim milk powder (subject to a 10% tolerance either way), once again for shipment to CONASUPO in Mexico. Although the Canadian Dairy Commission would not guarantee any supplies for this contract, it was our opinion that the contract could be filled by purchasing from the private Canadian processors of skim milk powder, and accordingly we offered to sell the full 25,000 metric tons, subject to the 10% tolerance, and our offer was accepted. Eventually, approximately 27,000 metric tons were shipped on this contract, and I believe that all but the last 1,000 tons were purchased from private processors..."

"With respect to all of the contracts... in 1968, 1969 and 1970, Ronald A. Chisholm Limited acted as a principal in all respects, including that:

- (a) it sourced the powder from private Canadian producers or from the Canadian Dairy Commission;
- (b) it negotiated the purchase price from the suppliers;
- (c) it financed the purchase of the powder from its own resources;
- (d) it arranged for and paid for the shipment of the powder to Mexico;

- (c) where necessary, it arranged for and paid for any testing of powder which was required in order to meet CONASUPO's specifications."

As to this, David Schafer in evidence stated:

"On May the 9th, 1969, I learned from CONASUPO officials that the American trader Thomas P. Gonzalez of Los Angeles had submitted an offer for the large CONASUPO tender, of Canadian powder which he had apparently made arrangements to obtain through a Canadian purchasing agent.

"I immediately telephoned my son George in Montreal to tell him that this was contrary to Mr. Barry's oral promise, and to ask him to remind Mr. Barry that milk powder is subsidized at the expense of Canadian taxpayers, and that it was unjust to Canadians for an American company to receive the benefit of Canadian export subsidies.

"On May the 12th, 1969, Mr. Barry wrote to Schafer Bros. Ltd., that although the C.D.C. dealt only with the Canadian firms concerning milk powder exports, he could not take a position which would require Canadian firms to conduct their negotiations with foreign buyers directly rather than through agents." (Exhibit 12, Vol. 2, p. 396)

That is the evidence so far as the situation obtained in 1969.

Subsequently, as noted, in the spring of 1971 the Canadian Dairy Commission made its first direct sale of skim milk powder to CONASUPO and ceased to pay any subsidy to any private traders who attempted to deal with CONASUPO, and thereby effectively excluded all private traders from the CONASUPO market for skim milk powder.

As to this latter, Ronald A. Chisholm Ltd. complained by telex on the 2nd of April, 1971 to the Honourable H.A. Olson, Minister of Agriculture, regarding the actions of the Canadian Dairy Commission with respect to the CONASUPO market for Canadian skim milk powder. Ronald A. Chisholm Ltd. proposed that a delegation of three private sector traders meet with the Minister to discuss the matter. (Exhibit 12A, Vol. 8, p. 1482)

Ronald A. Chisholm Ltd. apparently also made complaints to other Ministers including the Minister of Industry, Trade and Commerce.

As a result of this latter complaint, Mr. A.G. Kniewasser, Senior Assistant Deputy Minister, Industry and Trade Development of the Department of Industry, Trade and Commerce wrote to Dr.

Barry, Chairman of the Canadian Dairy Commission on the 20th of May, 1971. On the 26th of May, 1971 Dr. Barry replied to Mr. Kniewasser, in part as follows:

"In the last two years at least, that is in 1969 and 1970, we established a rate of subsidy which we would pay to anyone who got the Conasupo business, but insisted that it had to be a direct contract between a Canadian firm and Conasupo.

"Now, I think I know the Canadian firm [Ronald A. Chisholm Ltd.] which is complaining the most about the recent arrangement with Conasupo. If I am correct, it is the one which claims to have done most of the recent business from Canada to Conasupo. That firm has also complained because some sales of Canadian powder have been made by foreign firms.

As matters turned out, and in spite of our insistence that to qualify for subsidy a Canadian firm should contract directly with Conasupo, that did not happen in the case of this firm. The contract was taken by an American firm and the Canadian merely acted as the agent of the American firm to secure the powder in Canada." (Exhibit 12, Vol. 3, p. 608)

Dr. Barry in oral evidence at the Inquiry said that he was in error to have included the reference to "1969" in the portion of the letter as quoted above.

From this and all the evidence, the conclusions are:

First, it was known in the trade that there would be practically no skim milk powder from the United States available to supply this 1969 CONASUPO request for 25,000 tons of skim milk powder.

Second, it was known in the trade, including David Schafer of Schafer Bros. Ltd., that Thos. P. Gonzalez Corporation of Los Angeles and Mexico City had been very successful in joining with various private traders to conclude contracts with CONASUPO for the sale of skim milk powder and other products.

Third, David Schafer probably thought that if Thos P. Gonzalez Corporation could be taken out of the picture, so to speak, the prospects of Schafer Bros. Ltd. concluding the contract with CONASUPO would be enhanced.

Fourth, as a consequence, he had the above-mentioned conversation with Dr. Barry. David Schafer understood as a result of that conversation that no subsidy would be paid on the export of Canadian skim milk powder if the powder was not sold directly by a Canadian private trader to CONASUPO without the use of any intermediary, such as Thomas P. Gonzalez.

Fifth, Dr. Barry's understanding of his conversation with David Schafer is not the same as David Schafer's.

Sixth, Ronald A. Chisholm Ltd. exported from Canada 27,000 tons of Canadian skim milk powder to fulfil this contract with CONASUPO in 1969. Although the company says it acted as principal in all respects, the form such contract took was that Ronald A. Chisholm Ltd. sold the powder to Thos. P. Gonzalez Corporation who in turn resold to CONASUPO.

In this latter connection, the evidence disclosed that because of complaints made in respect to this 1969 transaction with CONASUPO, the form of the contract was changed for the 1970 sale so that in form Ronald A. Chisholm Ltd. contracted directly with CONASUPO. But the important and significant matter is that Thos P. Gonzalez Corporation acted for Ronald A. Chisholm Ltd. in connection with the 1970 contract substantially as it did in connection with the 1969 contract. The only difference in respect to the 1970 contract was that a company called CEPASA, who frequently acted as the agent of Thomas P. Gonzalez in Mexico, was formally appointed the agent of Ronald A. Chisholm Ltd. in Mexico for the purposes of this particular contract.

The conclusions, therefore, are that it was within the authorized power of the Canadian Dairy Commission to pay the subsidy it did to Ronald A. Chisholm Ltd. in respect to the export sale of the 27,000 tons of Canadian skim milk powder in 1969 and that the Canadian Dairy Commission was under no obligation to David Schafer or Schafer Bros. Ltd. to limit the circumstances under which it would pay such a subsidy. In any event, that is not the real underlying basis for the complaint here.

The real basis of the complaint is that David Schafer did not succeed in excluding Thos P. Gonzalez Corporation from participating in the negotiation for the 1969 contract to sell skim milk powder to CONASUPO. But even if this complaint had any merit, it is irrelevant because, in fact, Schafer Bros. Ltd. would not have received the contract. The Schafer Bros. Ltd. bid was 61¢ above the bid made by what may be termed the successful Ronald A. Chisholm Ltd.-Thos P. Gonzalez Corporation bid. As to this, counsel for Ronald A. Chisholm Ltd. computed the differential between the two bids and put the computation to David Schafer in evidence, to which he had to agree: the Schafer Bros. Ltd. bid for 25,000 tons of skim milk powder was \$336,000 higher than the successful Ronald A. Chisholm Ltd. — Thos P. Gonzalez Corporation bid.

Subparagraph (b) of the allegation, namely that the Canadian Dairy Commission refused to make its stocks available to Schafer Bros. Ltd. and then agreed to make its stocks available to other Canadian exporters, is also without merit. The evidence is that

the Canadian Dairy Commission telexed to all private traders on February 11, 1969 that the Canadian Dairy Commission would not supply powder for this 1969 proposed contract with CONASUPO except for small amounts for emergencies. (It also advised that the amount of the subsidy would be 13.8¢.) David Schafer believed prior to the evidence at this Inquiry that Ronald A. Chisholm Ltd. had sourced all the powder for this contract from the Canadian Dairy Commission inventory. In this he was shown to be wrong. The Canadian Dairy Commission only supplied 1,000 tons on an emergency basis to Ronald A. Chisholm Ltd. so that it could deliver the 27,000 tons actually called for under the contract. In supplying the 1,000 tons the Canadian Dairy Commission exacted a 1¢ per pound premium, amounting to \$22,000, from Ronald A. Chisholm Ltd.

Nor is there any merit in subparagraph (c) of this allegation. The evidence of David Schafer as to this is:

"On April the 28th, 1969, I phoned Mr. Barry in Ottawa, from Mexico. He informed me that the Dairy Commission intended to make a direct offer to CONASUPO and that although he might be prepared later, if the CDC got the contract, to discuss possible involvement on Schafer Bros.' part, he wished to do the actual negotiating with CONASUPO himself."

"On May the 1st, 1969, I went to Ottawa to meet with Mr. Barry.

"He told me that the Canadian Dairy Commission had full intentions of continuing its negotiations with CONASUPO and that he was not prepared to work out any sort of arrangements with Schafer Bros. Ltd. before the tender."

The Canadian Dairy Commission's action in making a tender did not discourage either Ronald A. Chisholm Ltd. or four other firms from making tenders.

Counsel for Schafer Bros. Ltd., at the conclusion of all evidence, agreed that Schafer Bros. Ltd. had no evidence to support this allegation.

(The incidents relating to this allegation do, however, illustrate the ad hoc nature of much of the Canadian Dairy Commission's conduct, a matter that will be returned to in this Report.)

14. *Allegation A.6*

Allegation A.6 reads as follows:

"In 1969, 1970 and 1971, Schafer Bros. Ltd. lost out to a competitor on sales to CONASUPO as a direct result of irregular behaviour on the part of the senior officials of the C.D.C."

The year 1971 was added to this allegation at the request of counsel for Schafer Bros. Ltd., but no evidence was adduced in respect of 1971 so only the years 1969 and 1970 need be considered.

The source of this allegation is the letter of Michel Choquette to Gilles Choquette, then Executive Assistant to the Minister of Agriculture (Exhibit 6, Vol. VI, p. 161 and 162), where he writes: "... having, both in 1969 and 1970, lost out to Gonzalez/Chisholm on the large sales to CONASUPO as a direct result of what they felt was most irregular behaviour on the part of the senior officials of the Commission..." In elaboration of this, Michel Choquette alludes to the following suspicions:

1. The giving, or facilitating the giving, of inside information regarding bids to Ronald A. Chisholm Ltd. and/or Thomas P. Gonzalez in 1969 and 1970. (Exhibit 6, Vol. VI, pp.7, 139-140; Exhibit 6, Vol. VII, p.78; Transcript pp. 2468, 1841, 2783-86, 733-39, and Exhibit 12, Vol. 3, p. 505)
2. The matter of deliberately and repeatedly giving false information to Schafer Bros. Ltd. (Exhibit 6, Vol. VI, p.174), specifically in respect to:
 - (a) the 770 ton sale in early 1969 (see Allegation A.4), and
 - (b) the March 31, 1969 telephone conversation between David Schafer and Dr. Barry (see Allegation A.5(a)) (Exhibit 6, Vol. VI, p. 157);
3. The alleged receipt of kickbacks from Ronald A. Chisholm Ltd. or Thomas P. Gonzalez in return for preferential treatment (Exhibit 6, Vol. VI, p.175 above quoted);
4. The use of the word "fraud" (Exhibit 6, Vol. VI, p. 175, above quoted).

In this connection, it is convenient to quote from the said letter of Michel Choquette to Gilles Choquette, particularly pages 174 and 175, namely:

"Criminal liability: To consider, first of all, the criminal implications, may I draw your attention to what I have described earlier concerning the misleading actions of the senior officials of the Canadian Dairy Commission who, at the time of Schafer Bros.' loss leader sale to CONASUPO in 1969, threw obstacles in the Schafers' path by repeatedly giving them totally false information about the quality specifications and the whereabouts of registered powder in government stocks — not only with respect to heat treatment, of which for reasons best known to itself the Commission preferred not to keep records, but also with respect to DMC

count, of which the Commission most certainly did keep records.

"May I also remind you of the most irregular manner in which the Commission acted in providing information about supplies and subsidies at the time of the large 1969 and 1970 CONASUPO tenders, thereby allowing two of Schafer Bros.' competitors — Ronald A. Chisholm of Toronto and Thomas P. Gonzalez of Los Angeles — to join forces and make the sales.

"In addition, if it were to be proven that certain officials of the Canadian Dairy Commission received illegal "kickbacks" for their preferential treatment of Messrs. Gonzalez and Chisholm, or even extended favoured treatment to these traders without receiving supplementary remuneration, then this secretive transfer of the Mexican market for Canadian skim milk powder to these favoured individuals would surely constitute legal grounds for prosecution.

"Furthermore, if, in spite of the Canadian Dairy Commission's 'official' statements that by 1971 it had monopolized the Mexican market for skim milk powder and that consequently it was no longer giving export subsidies to private traders for sales of this commodity to Mexico, it could be shown that the same favoured Canadian exporters or any other traders received subsidies for sales to CONASUPO which the Dairy Commission refused to extend to Schafer Bros., it is probable that a court of law would find the past senior officials of the Commission guilty of fraud."

At the Inquiry, David Schafer, George Schafer and Michel Choquette were invited to give any evidence they had supporting this allegation. David Schafer said he had no evidence of any impropriety by Ronald A. Chisholm Ltd. (Transcript, pp.2254). George Schafer said he had no knowledge of anything to justify the allegation of kickbacks (Transcript, pp. 2374-75). Michel Choquette said he had nothing to support the "hypothesis" regarding Ronald A. Chisholm Ltd. He said they were merely questions he felt should be raised. (Transcript, pp. 2358-59).

David Schafer said that he felt that for Ronald A. Chisholm Ltd. and Thos P. Gonzalez Corporation to have outbid him by what to him were small margins, they must have had inside information. He said he "thinks" Messrs. Rodriguez Ayala and Rodriguez Licea told him that Thomas P. Gonzalez had inside information but that he did not know what it was.

(As to this latter there is no evidence, but it may very well be that Thomas P. Gonzalez had some kind

of inside information from CONASUPO. Apparently that was possible because David Schafer himself said that he had on occasion obtained inside information from CONASUPO and that that was how he outbid Gonzalez in January 1969.)

In respect to the 1970 contract with CONASUPO for 7,000 tons, Ronald A. Chisholm Ltd.-Thomas P. Gonzalez outbid Schafer Bros. Ltd. by a tenth of a cent per pound as stated. David Schafer said this was a very small margin and was the reason he suspected that Ronald A. Chisholm Ltd.-Thos P. Gonzalez Corporation had inside information. (See Exhibit 6, Vol. VII, p.78). However, this .1¢ a lb. translated into a difference of \$15,400 on the contract. The fact is, also, that Ronald A. Chisholm Ltd.-Thos P. Gonzalez Corporation bid lower than other rivals on that tender by an even narrower margin than .1¢ per lb.

There is unequivocally no evidentiary basis for this allegation.

As discussed elsewhere in this report, it is highly improper, inexcusable and shocking for allegations to have been made in the form in which they were made in the July 25, 1977 letter of Michel Choquette to Gilles Choquette without any evidentiary basis.

15. *Allegation A.7*

Allegation A.7 reads as follows:

"In 1971, the C.D.C. frustrated a maturing business opportunity for Schafer Bros. Ltd. to structure a combination wheat/powder deal with Mexico by selling a large quantity of skim milk powder to CONASUPO."

Mr. David Schafer in his evidence put the actual basis for the allegation in this way:

"In the presence of Mr. Rocchi, Mr. de la Vega told me that the Canadian Dairy Commission had expressed interest in dealing directly with Mexico and had informed CONASUPO officials that since the C.D.C. controlled the export subsidies for Canadian Dairy products, it was in a better position to offer the most competitive prices from Canada.

"While at CONASUPO headquarters, I also met the new Purchasing Manager, Mr. Manuel Bravo Senties.

"Mr. Bravo Senties told me that CONASUPO might be looking for as much as 40,000 tons of skim milk powder for the current 1971 year and that Mexico was also interested in purchasing a large quantity of wheat.

"I suggested to him that it might be possible for Canada and Mexico to arrive at an

arrangement where Canada would deliver skim milk powder as well as wheat to Mexico on a combination sale on a long term credit basis.

"Mr. Bravo Senties expressed interest in this possibility, asked me to present a formal, written proposal, and told me that he would be most appreciative if I could speak to the Canadian Government about it upon my return to Canada.

"On February the 19th, 1971, Mr. Goodwillie wrote to us, stating that the C.D.C. would not commit itself to supplying more than 1,500 tons of powder for the Chilean tender, and that this quantity would not be available until May. Mr. Goodwillie added that the subsidy would be 10¢ per lb...

"On February the 24th, 1971, in Mexico, I personally delivered a letter to Mr. Bravo Senties at CONASUPO, outlining the basic elements of a combination skim milk powder and wheat sale...

"On March the 2nd, 1971, I returned to Montreal, and called Mr. Goodwillie at the C.D.C., advising him that there was a possibility of making a large combination milk powder and wheat sale to CONASUPO.

"On April the 6th, 1971, I went to Ottawa in order to meet with Mr. Goodwillie and during that interview I described to him the details of the proposed combination milk powder and wheat sale.

"Mr. Goodwillie told me that the C.D.C. could make absolutely no decision about grain sales and he refused to commit himself as to whether the C.D.C. would be interested in such a combination deal.

"Mr. Goodwillie told me at that time that CONASUPO had recently purchased a large quantity of high heat powder from Thomas P. Gonzalez at \$575.00 US per ton (about 26.2¢ Canadian per pound).

"On April the 6th, 1971, I met with Mr. N.A. O'Connell, of Market Operations at the Grains Program Office, in order to discuss the potential combination deal.

"Both Mr. O'Connell and Senator McNamara, former Chief Commissioner of the Canadian Wheat Board suggested that I contact XCAN Grain Limited in Winnipeg, which handles exports for the prairie province wheat pools.

"On that same day, I met the Honourable Otto Lang, Minister responsible for the

Canadian Wheat Board, and outlined the details of the combination milk and wheat sale in which Mr. Bravo Senties of CONASUPO has stated he was interested.

"Mr. Lang said that he would speak with officials at the Canadian Wheat Board as well as at the Canadian Dairy Commission.

"On April the 15th, 1971, I wrote to Mr. E.W. Pierce, General Manager at XCAN, explaining the details of the proposed combination sale...

"On April 20 I flew to Winnipeg to spend two or three days, looking into wheat sale possibilities. At XCAN I met with Mr. Pierce, and also Mr. George Turner. These two gentlemen expressed interest in working on the combination milk and wheat sale to Mexico.

"While I was still in Winnipeg carrying on these discussions, I learned that the Canadian Dairy Commission had just sold approximately 10,000 tons of skim milk powder to CONASUPO, thereby making the combination sale which I had been working on impossible."

From this evidence, Dr. Barry's evidence, and the documentary evidence, it is clear that although Schafer Bros. Ltd. were attempting to formulate a proposal, it could not be described as a "maturing business opportunity".

The Canadian Dairy Commission was entitled to and did make a direct sale of skim milk powder to CONASUPO in 1971. As already discussed, the Canadian Dairy Commission had to do so, or otherwise CONASUPO would not have purchased Canadian skim milk powder.

In sum, there is no evidence:

- (a) that the Canadian Dairy Commission made the sale to CONASUPO in order to prejudice the attempt by Schafer Bros. Ltd. to structure a skim milk powder/wheat deal to CONASUPO;
- (b) that the Canadian Dairy Commission's sale had the effect of prejudicing any Schafer Bros. Ltd. efforts, or
- (c) that the skim milk powder/wheat deal could have been put together in any event. (There were considerable difficulties setting up the wheat part of the proposed deal. (See Exhibit 12, Vol. 3, p. 627).

In the result, there is no evidentiary basis for this allegation.

16. *Allegation A.8*

Allegation A.8 reads as follows:

"In the winter of 1975-1976, when the Philippines invited tenders for a large three year contract the C.D.C. made it unnecessarily difficult for Schafer Bros. Ltd., which was the only Canadian trader contending, to compete with foreign competitors by

- (a) its lack of cooperation in providing timely assurances of prices and supplies, and also regarding preparation and support for important meetings, and
- (b) falsely denying that a request had come from Manila for the Commission to attend an important meeting."

The evidence before the Inquiry regarding this allegation consisted almost exclusively of the evidence of George Schafer, that of Richard Tudor Price (Director, Marketing Intelligence for the Canadian Dairy Commission) and certain documentary evidence.

Before going into details of this matter, it should first be noted that George Schafer said orally in evidence at the Inquiry that he had received cooperation from the Canadian Dairy Commission and that it was not the fault of the Canadian Dairy Commission or its officials that this sale was lost. He stated that it was lost because of some internal matter in the Philippines. George Schafer seems to blame, in part, his agent in the Philippines.

Speaking generally, the essence of what might be termed the so-called Philippines complaint is not one of discrimination by the Canadian Dairy Commission and its officials against Schafer Bros. Ltd., but rather a lack of aggressiveness by and depth of assistance rendered to Canadian exporters by the Canadian Dairy Commission.

In this connection it may be noted that the Canadian Dairy Commission and, in particular, Richard Tudor Price, did not have a large technical staff. Notwithstanding that, however, with the assistance of Mr. Tudor Price and other Canadian Dairy Commission officials all the technical problems of this proposed transaction in the Philippines were overcome. (See Michel Choquette memo to Gilles Choquette Exhibit 6, Vol. V, September 30, 1976.)

Exhibit 6, Vol. V consists of a series of memoranda made by Michel Choquette at the material time as to this matter, and after, all of which were sent to Gilles Choquette who was then Executive Assistant to the Minister of Agriculture. Together they set out what Michel Choquette conceives to be the position of Schafer Bros. Ltd. re the Philippines.

The facts are that the Canadian Dairy Commission had a very large surplus of skim milk powder in 1975,

and it was a priority to get rid of it as soon as possible and before it aged unduly. The Department of Industry, Trade and Commerce was itself involved in the search for markets. The origin of the Schafer Bros. Ltd. interest in this particular Philippines contract was as follows: Mr. Maravillas, from the Canadian Embassy in the Philippines told George Schafer that the Philippines purchase program was being reorganized and probably all purchases in future would be made through a new organization known as Food Terminal Inc. As a result of this information, on the 25th November, 1975, Schafer Bros. Ltd. offered to Food Terminal Inc. 50,000 tons of skim milk powder a year for three years with prices subject to verification. This offer was not, ultimately, accepted.

The reasons the Schafer Bros. Ltd. offer was not accepted (the offer of the New Zealand Dairy Board was accepted) appear to be:

- (a) Food Terminal Inc. did not, in fact, end up being the purchasing agent for the Philippines government and so did not have the power to complete the deal with Schafer Bros. Ltd.;
- (b) New Zealand and Australia maintained substantial representation in the Philippines for the sale of their skim milk powder and had many established contacts with local manufacturers and government officials there;
- (c) The agent of Schafer Bros. in the Philippines, one Isip, was not effective in any event in getting the specifications as to the heat treatment requirements from the local Philippines manufacturers. These specifications did not come until well after the January 8, 1976 meeting with the Philippines authorities in the Philippines, which meeting was the opportunity for Canadian exporters and officials to satisfy local authorities that Canadian skim milk powder could meet the requirements for the applications envisaged in the Philippines.

It should be noted that as a result of an international arrangement among Australia, New Zealand, the Canadian Dairy Commission and the E.E.C., none of the bidders on this contract could initially obtain supplies of skim milk powder for sale to the Philippines under a floor purchase price of \$520/ton. As to this, Exhibit 165, prepared by Mr. Tudor Price, reads in part as follows:

"In October 1975 Canadian Dairy Commission entered an informal understanding with other exporters intended to stabilize the human food skimmed milk powder price at U.S. \$520 per metric ton f.o.b. country of origin. This understanding operated until 1 April 1976 when the price fell to the GATT minimum. By early 1977 the human food price had risen above the minimum and has

continued to increase until the present time when it is U.S. \$950 — U.S. \$1000 per metric ton f.o.b. as balance has been restored to the market.”

The price quoted by the Canadian Dairy Commission to Schafer Bros. Ltd. did not, however, have anything to do with the failure to make this sale. In fact, although Schafer Bros. Ltd. did not request a better price in December, 1975 or January, 1976, on the 5th April, 1976, when price cutting was taking place among this group, the Canadian Dairy Commission dropped its price to Schafer Bros. Ltd. to \$350/ton from \$526/ton.

There was a certain amount of confusion in the correspondence between David Schafer and George Schafer with the Canadian Dairy Commission as to quantities, the fault which did not lie with the Canadian Dairy Commission.

The great difficulty in getting the specifications from the manufacturers in the Philippines is not satisfactorily explained. Apparently there was some dispute in the Philippines between the processors and the Philippines government as to whether more skim milk powder was needed and for what. In any event, Schafer Bros. Ltd. did not supply the specifications to the Canadian Dairy Commission in time for the Canadian Dairy Commission to do anything more than it did.

In respect to the allegation that Schafer Bros. Ltd. was the only Canadian exporter who may have been involved in attempting to obtain a contract in the Philippines in this matter, Canada Packers Ltd. may have also been negotiating for the sale, but there is insufficient evidence to substantiate this. Canada Packers Ltd. informed the Inquiry that its relevant records had been destroyed.

As to the interest and participation of other Canadian traders in this business prospect, on December 9, 1975 Schafer Bros. Ltd. asked Richard Tudor Price for some exclusivity but was “firmly refused”. Michel Choquette also suggested exclusivity for Schafer Bros. Ltd. in one of his memoranda to Gilles Choquette.

In respect to subparagraph (b) of the allegation, there may have been some misunderstanding between George Schafer and Richard Tudor Price at some point, but the facts are that Richard Tudor Price did go to Manila, attend the meeting and render every assistance to George Schafer. George Schafer confirmed in evidence that he did so.

In sum, there is no evidentiary basis for this allegation.

17. *Allegation A.9(a)*

Allegation A.9(a) reads as follows:

“In 1977, the C.D.C. made it virtually impossible for Schafer Bros. Ltd. to take advantage of the following business opportunities by failing to answer its inquiries or by unduly delaying information regarding the availability of supplies, subsidies or potential sale opportunities:

- (a) a Peruvian inquiry in March concerning a certain type of high stabilized heat powder;“

Whether or not there is any merit in this allegation depends on whether or not six questions put on different occasions between March and May, 1977 by Schafer Bros. Ltd. to the Canadian Dairy Commission were answered by the latter. The questions concerned availability, quantity, specifications, packing, credit terms and performance bond.

On May 12, 1977, Richard Tudor Price of the Canadian Dairy Commission telexed George Schafer (Doc. 1128, Exhibit 12) with answers to the six questions:

- (a) Availability - “C.D.C. hereby extends you options for Canada first grade SMP... as per EPCHAP tender.”
- (b) Quantity - “High heat up to 60 metric tons medium heat up to 660 metric tons low heat up to 552 metric tons.”
- (c) Specifications - “Canada first grade... as per EPCHAP tender. C.D.C. not offering AMF heat stabilized powder or whey milk powder.”
- (d) Packing - SMP packed to C.D.C. general requirements of purchase for shipment.”
- (e) Credit Terms - “C.D.C. will not offer Canadian traders credit.”
- (f) Performance - “C.D.C. will not offer Canadian traders... performance bond.”

On May 13, 1977, George Schafer telexed Richard Tudor Price in acknowledgement of the above May 12, 1977 telex; and commented that it was “impossible for us to offer what buyer needs with terms you offered us.”

In respect to the credit matter, George Schafer commented that Schafer Bros. Ltd. may be able to get credit from the private sector; and in respect to

the performance bond he asked for the Canadian Dairy Commission's "kind cooperation". In addition, George Schafer requested extension of the validity of the offer to May 31, 1977. (See Document 1130, Exhibit 12).

On cross-examination David Schafer agreed that Richard Tudor Price did in fact answer every question contained in George Schafer's telex to Richard Tudor Price of May 9, 1977. (Transcript p. 1160). David Schafer also agreed in evidence that the April 25, 1977 telex was also answered by the May 12, 1977 telex. (Transcript p. 1172).

David Schafer also said in evidence that three days is sufficient time to prepare an offer; that the questions were asked on May 9, 1977, the reply was received on May 12, 1977, and the tender was to close on May 16, 1977. (See Transcript p. 1161)

In addition, George Schafer on cross-examination said that Schafer Bros. Ltd. received answers from the Canadian Dairy Commission to all the questions Schafer Bros. Ltd. had put to the Canadian Dairy Commission. (Transcript p. 1870).

Accordingly, it is difficult to understand why this allegation was made when Schafer Bros. Ltd. had in their possession at all material times the answers to every question that they had put to the Canadian Dairy Commission. Perhaps an explanation is that this transaction was of little or no importance to them in any event. Counsel for Schafer Bros. Ltd. submitted no argument directed to this allegation.

There is therefore no evidentiary basis to support this allegation.

18. *Allegation A.9(b)*

Allegation A.9(b) reads as follows:

"In 1977, the C.D.C. made it virtually impossible for Schafer Bros. Ltd. to take advantage of the following business opportunities by failing to answer its inquiries or by unduly delaying information regarding the availability of supplies, subsidies or potential sale opportunities:

- (b) a Mexican inquiry in August for a potential sale of 30000 tons of skim milk powder;"

By formal agreement dated 17th August, 1977, but effective from May 20, 1977, the Canadian Dairy Commission entered into a contract with Ault Foods (1975) Ltd., appointing it the Canadian Dairy Commission's agent for sales to CONASUPO of Canadian skim milk powder.

Notwithstanding the existence of this contract between the Canadian Dairy Commission and Ault Foods (1975) Ltd., the following transpired.

On August 19, 1977 George Schafer telexed L.J. Marcellus, Director of Marketing Operations of the Canadian Dairy Commission, indicating that Schafer Bros. Ltd. had received an inquiry from Mexico for Canada first grade skim milk powder for human consumption. (See Document 1640, Exhibit 12A).

On August 30, 1977, Schafer Bros. Ltd. telexed Gilles Choquette, saying it had received an inquiry from an "official source in Mexico" for 30,000 metric tons of Canada first grade skim milk powder. (See Document 1643, Exhibit 12A). David Schafer testified at the Inquiry that the "official source in Mexico" was in fact the Commercial Secretary in Ottawa, Mr. Olivares, and that he, David Schafer, had spoken to him at a reception for Mayor Drapeau in Montreal (Transcript pp. 1043-46).

David Schafer testified that subsequently Gilles Choquette told him that the Canadian Dairy Commission would be offering to sell 45,000 metric tons of skim milk powder to CONASUPO and that Schafer Bros. Ltd. would be able to handle part of this quantity if a contract were entered into. David Schafer said further that when Mr. Choquette returned from Mexico in November 1977, Mr. Choquette phoned him to say that the Mexican transaction was smaller than had been expected and that the transaction would be handled completely by Ault Foods. (Transcript pp. 1048-49).

At this Inquiry Gilles Choquette stated that the Canadian Dairy Commission had received several inquiries about a 30,000 ton sale and that in response to each, presumably including that of Schafer Bros. Ltd., the Canadian Dairy Commission had said that the exporter would have to be able to assure the Canadian Dairy Commission that CONASUPO wished to deal directly with that exporter before a sale could be discussed further. If there was no such assurance the Canadian Dairy Commission would deal directly with CONASUPO. This view is consistent with the information received in the interviews in Mexico.

Gilles Choquette also stated in connection with the proposed 30,000 metric ton tender for skim milk powder for CONASUPO that in November 1977 David Schafer had come to his office to say that Schafer Bros. Ltd. wanted to be the Canadian Dairy Commission's agent for sales of skim milk powder in Mexico but that Gilles Choquette informed him that the Canadian Dairy Commission had already appointed an agent for it, namely Ault Foods (1975) Ltd., who were already, pursuant to that arrangement, making deliveries of skim milk powder to CONASUPO in Mexico.

Accordingly, there was no evidence to suggest that the Canadian Dairy Commission failed to answer the inquiries of Schafer Bros. Ltd. in respect to this matter or that it unduly delayed information regard-

ing the availability of supplies, subsidies, or potential sales opportunities as alleged.

In this connection also, counsel for Schafer Bros. Ltd. made no submission in respect to this allegation except in reply to the joint submission of counsel for the Canadian Dairy Commission and the other parties. The reply was irrelevant in respect to the allegation.

19. *Allegation A.9(c)*

Allegation A.9(c) reads as follows:

"In 1977, the C.D.C. made it virtually impossible for Schafer Bros. Ltd. to take advantage of the following business opportunities by failing to answer its inquiries or by unduly delaying information regarding the availability of supplies, subsidies or potential sale opportunities:

- (c) an Algerian call for tenders in November for 10,000 tons of skim milk powder and 6,000 tons of anhydrous milk."

On October 13, 1977 Schafer Bros. Ltd. telexed Gilles Choquette that an inquiry had been received from Algeria for the possibility of supplying it with 6,000 metric tons of anhydrous milk fat and 10,000 metric tons of skim milk powder.

On October 26, 1977 David Schafer visited Richard Tudor Price at Ottawa and discussed with him this Algerian inquiry. David Schafer at that time said he had not seen any tender documents.

On November 8, 1977, Richard Tudor Price telexed David Schafer and asked him for the closing dates of the tender.

On November 8, 1977, George Schafer communicated to Richard Tudor Price that he would provide the closing date of this Algerian tender later.

On November 16, 1977, George Schafer, instead of replying to Mr. Tudor Price, wrote to Gilles Choquette asking the Canadian Dairy Commission whether it could furnish the supplies and if so at what price, and to provide him with the tender conditions. On November 23 and 24, 1977, David Schafer telexed Gilles Choquette saying no reply had been received to the telex to him of October 13, 1977, and also the letter of November 16, 1977, and stated that he must respond to the tender at the latest on November 25, 1977.

Richard Tudor Price said in evidence that after the November 8 reply of George Schafer stating that he would telex him the tender closing dates later, he had heard nothing more about this matter from Schafer Bros. Ltd. until November 25, 1977, when he noticed the telex of November 25, 1977, of Schafer Bros.

Ltd. to Gilles Choquette in the latter's office while Mr. Choquette was absent from Ottawa.

Richard Tudor Price said that he telephoned George Schafer who told him the tender was due the next day, and then advised George Schafer that the Canadian Dairy Commission could not offer anhydrous milk fat, but gave him a price indication for the skim milk powder. Mr. Tudor Price said that George Schafer was supposed to contact the Canadian Dairy Commission to provide the Algerian specifications, and to get their reaction to the indicated price, but he failed to do so. The details of that telephone conversation, according to Mr. Tudor Price, were confirmed in a telex sent on Monday, November 28, 1977.

David Schafer said in evidence that he approached Gilles Choquette directly in this matter because he had lost faith in Richard Tudor Price. He agreed that some time was lost by seeking to contact Gilles Choquette directly. He also agreed that Richard Tudor Price had phoned George Schafer on November 25, 1977 and, further, he agreed with Mr. Tudor Price's account of the conversation given in Mr. Tudor Price's evidence above referred to.

Finally, David Schafer said in evidence that he did not remember whether or not Schafer Bros. Ltd. made a tender offer in response to this request for tender to Algeria.

On this evidence there is no basis for any complaint by Schafer Bros. Ltd.

It should be also noted in this respect that counsel for Schafer Bros. Ltd. made no submissions in respect to this allegation.

20. *Allegation A.10*

"In 1977, the C.D.C. unnecessarily required an attestation certificate for Schafer Bros. Ltd. to export 1,000 tons of skim milk powder to be used as animal feed in Chile.

As of at least May 10, 1976, pursuant to the General Agreement on Tariffs and Trade, an attestation certificate has been required from the country of import in the case of skim milk powder intended for animal feed, to the effect that the imported product would be used only for animal feed purposes in that country and not for human consumption. Such certificate was to be issued within 30 days of sale, and made available to the exporting country.

On May 13, 1976, there was a meeting of private traders held by the Canadian Dairy Commission and attended by David Schafer where the Canadian Dairy Commission explained the GATT requirements.

The evidence therefore establishes that David Schafer and George Schafer knew of this require-

ment. Further, David Schafer admitted in testimony that the Canadian Dairy Commission was obliged to request the certificate and that he was wrong in making this allegation.

Again, counsel for Schafer Bros. Ltd. made no submissions directed to this allegation, even though the allegation was added at the commencement of public hearings at the request of said counsel.

There is therefore no basis for this allegation.

21. *Allegation B.1*

Allegation B.1 reads as follows:

“The C.D.C. competed unnecessarily with private Canadian exporters.”

On cross-examination by counsel for Schafer Bros. Ltd., Dr. Lawrence Skeoch said there were no necessarily adverse implications for efficiency if a marketing board competes with private exporters. In Dr. Skeoch's words, “the more people you have trying to explore market opportunities and so on, the better”. In his view there was no reason why competition from the marketing board should discourage the efforts of people in the private sector — “soft competition is not really what we are trying to get in this world” Dr. Skeoch said that marketing boards should work energetically on all fronts, and should not have to rely totally on individuals. He referred specifically to the Canadian Wheat Board as one board that does a very good job in foreign marketing.

Dr. Skeoch said there was nothing unfair about a government moving in even where an individual has expended time and money in developing a market.

He further stated, in answer to a question from counsel for Schafer Bros. Ltd., that the well-being of private traders should not be the overriding concern in a government decision to give away food surpluses in an international aid program. The following exchange occurred in the cross-examination of Dr. Skeoch by counsel for Schafer Bros. Ltd. (Transcript pp. 376-78, 384-85):

“Q. If we could take a specific example, for instance the sale of skim milk powder over the years such as 1967 through 1976, a trader had to pay a two cent cash deposit on anything he wanted to export. That two cent cash deposit required certain financing if the amount of the powder he wanted to export was large. In addition, the trader had to pay for either five per cent or even less for a performance bond in order to guarantee the full amount would be exported and of course the trader would have to pay for his voyages back and forth to any given country as well as the various financing or personnel prob-

lems, if you will, figuring out what rates. If you take that on the one hand, and on the other hand a government marketing agency who has at their disposition, people who calculate freight rates and are paid by the government who don't have to undergo any financing problems in order to borrow money to pay either the full amount necessitated by the purchases or even a small amount such as the two cent per pound cash deposit necessitated by the government, all those problems are not faced by a big government but they are, are they not, by a private trader. How is it fair — this is the question I am putting to you based on your answer to my previous question — for a private trader to go into the market and be at the same level as the government especially if I may just complete it, since a private trader has to calculate a profit margin into his own scheme of figures, whereas the government doesn't necessarily have to calculate a profit margin to exist?

“A. The government as a representative of producers has no particular obligation to see anyone else is permitted or is subsidized in one way or another, listing certain costs and so on. The government has no obligation. The government is performing on behalf of the producers. It is not interested presumably in doing anything else. So if it feels it can perform more effectively, then I think it should be given the chance. If the individual is willing to — he must of course get his financing. That is obvious in any case, but there is no particular reason why the government should accept responsibility of providing him with financing. Suppose he doesn't do a good job? I can see no — I think you obviously are trying to establish the notion that there are certain preserved areas into which the government shall not enter even on behalf of the producers of the country if a private seller wants to go into those areas. I am not satisfied that one could make that condition.

“Q. But the government also represents exporters and taxpayers as well as producers?

“A. Yes, to some extent, but it doesn't have any obligation to subsidize them.

“Q. No. Dr. Skeoch, would you therefore consider it efficient on the part of the government to intervene and take over markets that have been developed by private traders? Do you think that is efficient economically, or does that discourage traders to develop other markets?

"A. The fact that somebody develops a market domestically doesn't mean that that market is guaranteed to him indefinitely. Other people can invade it very quickly and as a matter of fact this is done all the time. This is what is meant by competition. The fact that you are established in a market, that you spent some money developing a market doesn't mean that you would thereby acquire a right to continue to hold that market over any indefinite period of time. Now, if you were doing something in a superior fashion you should be allowed to do it, and should not be allowed arbitrary discrimination, but the essence of a competitive society, it's not that you have secure positions which are defended from other people, from other competitors, be they government or other agencies"

"Q. If we could just hypothesize that those things were true, that there was a taking over of the two largest markets for Canada for the sale of skim milk powder by the Canadian Dairy Commission and that these two markets are by far the largest, then would you not say that that type of intervention discourages private traders from developing other markets?"

"A. Well, I don't think you should worry too much as a matter of public policy. I don't think you should worry too much about whether it will put them out of the market so much as did they succeed by their marketing methods to improve the returns that the producers were getting. That is what they are supposed to do. You know they are not supposed to worry too much about other traders. They have a responsibility, as I recall their objectives here, they don't say anything much about protecting the interests of exporters. If they did not do a better job, if they did not do a better job in exploiting, developing the export market, then I would think they should give some explanation as to why they did what you said they did. I am not saying that they did this but from what you — the facts you give to me I would say that you want to ask them "Well, have you done a better job of promoting the interests of the groups, particularly the producers that you are responsible for, whose interest you are responsible for promoting?" and if they did I think they would have a logical basis for defending what they did. If not — but this is something, I think, Mr. Commissioner, that you will know more about after you have finished your proceedings than I can possibly say anything about. I do not want to get into that area."

Dr. Barry set out his view of the Canadian Dairy Commission's position in respect to this matter in general in a letter to Mr. A.G. Kniewasser, Senior Assistant Deputy Minister (Industry and Trade Development), Department of Industry, Trade and Commerce, dated May 26, 1971, in response to a letter from Mr. Kniewasser to him, dated May 20, 1971. Mr. Kniewasser replied to Dr. Barry by letter dated June 7, 1971. It will be helpful to reproduce this correspondence in full.

May 20, 1971.

Mr. S.C. Barry,
Chairman,
Canadian Dairy Commission,
2197 Riverside Drive,
OTTAWA, Ontario. K1A 0Z2.

Dear Mr. Barry:

Export Sale of Dry Skimmed Milk
by the Canadian Dairy Commission.

I wish to refer to the recent sale of dry skimmed milk by the Canadian Dairy Commission to the Mexican Government purchasing agency, CONASUPO.

I appreciate the circumstances under which this sale was made but, as was to be expected, we have received complaints from exporters who are apprehensive about the Commission selling directly in export markets to the possible detriment of their own export sales.

I share their concern and felt that I should bring this matter to your attention.

Yours sincerely,

A.G. Kniewasser,
Senior Assistant Deputy Minister
Industry and Trade Development.

May 26, 1971

Mr. A.G. Kniewasser,
Senior Assistant Deputy Minister,
Industry and Trade Development,
Department of Industry, Trade &
Commerce,
Place de Ville,
112 Kent Street,
Ottawa 4, Ontario.
K1A 0H5

Dear Mr. Kniewasser:

Export Sale of Dry Skimmed Milk
by the Canadian Dairy Commission

I have your letter of May 20 with reference to complaints which you have received from exporters on the above subject. There have been similar representations to us.

To put the matter in focus I should point out first, that we became involved in exports in any way only where export subsidies, or the sale below cost of product which we own, are concerned. We take no part in export business at commercial prices.

The costs of any such subsidies, or of losses on the sale of product which we have purchased under support, are not a charge against the government. The bulk of the funds required come from a levy against the price paid to the farmers for their milk. The rates of the levy are set by us. They are collected by, or under the authority of, provincial marketing agencies and are remitted to us.

We are, therefore, using producer money to cover these subsidies or losses. In the final analysis we are accountable to them for the proper management of the operation.

Export sales of skim milk powder on which we provide subsidy or supply product from our stocks fall into two broad categories.

One is purely commercial, from commercial firms in Canada to commercial firms abroad. On this type of business, where subsidy may be required, we merely establish a rate of subsidy and the commercial firms do the business.

The other category involves buying by, or under the authority of, government or semi-government organizations of the buying country. Mostly, this is by tender. Centralized Mexican buying, under Conasupo, has fallen in this category.

In this, also, our general operating procedure has been to fix a rate of subsidy, or a selling price on our product, on which exporters can base their quotations.

Up to the time of the present issue with Conasupo we have deviated from this principle in only two markets.

One is Cuba. In this case we negotiate a basic price with the Cuban authorities. They then designate a Canadian agent to handle the forwarding for them. The agent pays us, at the agreed price, for powder before we release it to him from storage and he in turn collects from the Cubans. We pay him his commission, again at an agreed rate which we negotiate.

The other case, which has so far been on only one occasion, was with India. CIDA had made a donation of skim milk powder to India on the condition that they purchase an equivalent quantity of Canadian powder. The Indian authorities insisted on dealing directly with us. We could, of course, have refused, but did not. They bought F.A.S. We merely engaged a forwarder to arrange the movement to one dock and assemble the documents, and the Indians paid us directly.

This brings me to Mexico, and Conasupo.

Up until recently, and apart from their purchases from the CCC in the United States, which they have negotiated directly, Conasupo's procedure has been to invite quotations from exporters in various countries. It has not been a tender procedure in the true sense.

In the last two years at least, that is in 1969 and 1970, we established a rate of subsidy which we would pay to anyone who got the Conasupo business, but insisted that it had to be a direct contract between a Canadian firm and Conasupo.

Now, I think I know the Canadian firm which is complaining the most about the recent arrangements with Conasupo. If I am correct, it is the one which claims to have done most of the recent business from Canada to Conasupo. That firm has also complained because some sales of Canadian powder have been made by foreign firms.

As matters turned out, and in spite of our insistence that to qualify for subsidy a Canadian firm should contract directly with Conasupo, that did not happen in the case of this firm. The contract was taken by an American firm and the Canadian merely acted as the agent of the American firm to secure the powder in Canada.

We had been particularly insistent on direct contracting by a Canadian firm in 1970 and had an indication that this had not been done only when the Canadian firm gave us details of the volume, shipping arrangements, etc. These involved some arrangements which we had not anticipated and which would have been more expensive to us.

We checked these out with Mexico and found that the information which had been given to us was not correct. When we confronted the Canadian firm with this, they confirmed that they had not made the contract with Conasupo, but had taken the word of the American contractor. They offered to get us a copy of the contract, but never did so.

There have been almost interminable problems in doing business with Conasupo through commercial channels. Every time they have called for bids all of the numerous agents in Mexico have tried to get numerous Canadian firms, whether or not they know much about the business, to submit bids.

There was a case where another Canadian firm, which also complains at any hint that we may negotiate directly, took a small contract with Conasupo for a special type of powder. We gave him a price at which we thought would sell our powder but warned him that we did not know which of our powder, or how much, would meet the specifications to which he had committed himself. We gave him lot numbers which we thought would come closest and arranged to let him draw samples for analysis. He had trouble filling his contract, was late in his deliveries to the embarrassment of Conasupo and tried to put the blame on us.

Whether or not because of experiences of this nature a Conasupo representative came to Ottawa recently and asked if they could negotiate a purchase directly with us. We told them we would. We gave them a price on both an f.a.s. and c&f basis and left it with them to decide which of the two to take.

If they had bought c&f, with all the involvement of shipping, we probably would have had a Canadian agent to handle it. However, they bought f.a.s., so we merely engaged a forwarder to get the powder to the dock, accumulate the documents, etc. We could hardly justify paying an agent up to five dollars a ton of farmers' money.

I apologize for the length of this letter. We are not interested in becoming the exclusive exporter of Canadian dairy products nor to take away the not only legitimate, but valuable, function of commercial interests. But I thought that in view of the complaints which you have been getting I should put down the full background.

Yours truly,
S.C. Barry,
Chairman.

June 7, 1971.

Mr. S.C. Barry,
Chairman,
Canadian Dairy Commission,
2197 Riverside Drive,
Ottawa, Ontario. K1A 0Z2.

Dear Mr. Barry:

Export Sales of Dry Skimmed Milk
by the Canadian Dairy Commission

Thank you for your comprehensive letter of May 26 on the above-mentioned subject.

I have noted the circumstances under which you have made direct sales to Cuba, India and Mexico, and I appreciate your position in this regard.

I am pleased to have your assurance that you are not interested in becoming the exclusive exporter of Canadian dairy products nor in taking away the legitimate function of commercial interests.

Yours sincerely,
A.G. Kniewasser,
Senior Assistant Deputy Minister,
Industry and Trade Development.

Ronald A. Chisholm Ltd. on April 2, 1971 telexed the Honourable H.A. Olson, then Minister of Agriculture protesting the exclusion of the private sector from selling Canadian skim milk powder to Mexico and proposing to him that a delegation of three from the private sector meet with him.

Mr. Timothy Chisholm of Ronald A. Chisholm Ltd. said in respect to this subject:

"In 1971, the Canadian Dairy Commission made it virtually impossible for any private Canadian trader to export skim milk powder to CONASUPO, by itself selling powder directly to CONASUPO at a price below the then prevailing world price, notwithstanding that Ronald A. Chisholm had gone on record with representatives of the Canadian Dairy Commission to the effect that no export subsidy was required, that the private trade was well able to serve the needs of CONASUPO, and indeed that we had done so in the preceding 3 years. The Canadian Dairy Commission's decision to sell directly to CONASUPO had the direct effect of severing the mature sales arrangements which Ronald A. Chisholm Limited had had with CONASUPO during 1968, 1969 and 1970, and deprived Ronald A. Chisholm Limited of a considerable opportunity to do further large volume export business of skim milk powder to CONASUPO. This decision resulted in the loss of substantial business opportunities by Ronald A. Chisholm Limited in 1971 and the ensuing years. It was my opinion at that time, and has remained my opinion to the present, that a Crown agency such as the Canadian Dairy Commission shall assist and compliment the private sector in the effort to attract and retain export sales rather than competing directly with the private sector, since the private traders can maintain a competitive edge through their marketing knowledge and experience, and the profit incentive which is inherent in the private sector.

"I believe that this opinion is supported by the fact that in 1977 the Canadian Dairy Commission decided to return to the private

sector by appointing a Canadian agent to deal with the export of skim milk powder to CONASUPO.

"Notwithstanding my support of the Canadian Dairy Commission decision to return to the private sector, I nonetheless must express my disagreement with the decision to do so by appointing an exclusive agent. It is my belief, based upon my experience and that of my Company, that the Canadian milk producer, processor and trader are all best served by permitting the Canadian traders who are skilled and knowledgeable in international marketing to compete with each other in attempting to obtain the best price for the product which is available for export."

The Canadian Milk Powder Manufacturers Association on February 1, 1972 passed a resolution protesting direct sales of Canadian skim milk powder to CONASUPO by the Canadian Dairy Commission.

There is a substantial difference between the Canadian Dairy Commission competing with private traders, and in it using its substantial powers to exclude competition. As of 1967-1968 it began to compete. The exclusion that occurred in 1971 was not, as stated above, the result of an act by the Canadian Dairy Commission but was instead the result of a policy of the Mexican government.

As a consequence there is no basis for this allegation.

22. *Allegation B.2*

Allegation B.2 reads as follows:

"The C.D.C. did not favour Canadian exporters, who dealt directly with foreign purchasers, over exporters who dealt through foreign agents."

This allegation is very similar to allegation A.5(a), and in discussing this particular allegation no repetition will be made of what was said there.

Before discussing this allegation it should be noted that the Canadian Dairy Commission Act does not require the Commission to act (at public expense) in the interests of exporters, Canadian or otherwise. In any event, as to this allegation all that is being referred to here is the March 1969 telephone call made to Dr. Barry by David Schafer in Mexico, as a result of which David Schafer believed that Schafer Bros. Ltd. should have been favoured over Ronald A. Chisholm Ltd. and Thomas P. Gonzalez Ltd. in obtaining the 25,000 ton contract for the sale of skim milk powder.

The conclusion is that there is no statutory basis for the complaint. Further, it is impossible to accept David Schafer's concept of what was correct policy for the Canadian Dairy Commission in this respect.

23. *Allegation B.3*

Allegation B.3 reads as follows:

The C.D.C. did not offer reasonable assistance to private Canadian exporters in that:

- (a) it did not cooperate fully in making supplies of skim milk powder readily available from its stocks, and
- (b) it was inflexible with regard to the terms and conditions of financing transactions and in adjusting export subsidies."

The only evidence in respect to this allegation is evidence that has already been referred to elsewhere under other allegations.

The conclusion is that there is no basis for these allegations.

24. *Allegation B.4*

Allegation B.4 reads as follows:

"The C.D.C. was not sufficiently aggressive and efficient in assisting Canadian exporters, who were faced with stiff competition, to develop and maintain markets for surpluses of skim milk powder."

The only evidence in respect to this was the evidence given in connection with Allegation A.8 concerning the Philippines.

The conclusion is that there is no basis for this allegation.

25. *Allegation B.5 and part of Allegation B.8*

Allegation B.5 and part of Allegation B.8 are conveniently dealt with together because the evidence relating to them concerned the same incident. They read as follows:

B.5 "The criteria and process by which the C.D.C. selected exclusive agents for its foreign sales were not subjected to adequate public scrutiny";

B.8 (part)

"The C.D.C. showed preference to certain Canadian exporters of skim milk powder other than Schafer Bros. Ltd... by appointing them marketing agents of the C.D.C. for certain international markets..."

The subject matter of these allegations is the circumstances surrounding the appointment of Ault Foods (1975) Ltd. as agent for the Canadian Dairy Commission to sell skim milk powder to CONASUPO, which appointment was made in 1977.

The principal oral testimony relevant to these allegations was given by Messrs. Tudor Price, Gilles Choquette and Samuel Ault. In addition, three officials of the Privy Council Office testified on an aspect of the matter as referred to below.

The documents of principal relevance originated with the Canadian Dairy Commission and related to the reasons for seeking an agent, the process of selection, and the contract with the agent.

It will be convenient to summarize the evidence in point form, without at this point making any findings as to its accuracy:

1. The relationship between the Canadian Dairy Commission and CONASUPO deteriorated late in 1976 as a result of the new government being elected in Mexico. There were extensive changes in the personnel at CONASUPO with whom the Canadian Dairy Commission dealt, which not only disrupted established contacts, but which also introduced less experienced people at the CONASUPO end. One particular immediate cause for concern was that the new administration at CONASUPO regretted the purchase by CONASUPO from the Canadian Dairy Commission, in December 1976, of 14,000 metric tons of 1976 skim milk powder. (See Evidence Statement of Gilles Choquette, paragraphs 17 to 24; Canadian Dairy Commission Minute, drafted May 18 as of May 10, 1977 — Exhibit 12b, pp. 1797-99)

2. In January 1977, the Canadian Dairy Commission made an offer to CONASUPO to sell an additional 25,000 metric tons of skim milk powder to CONASUPO. Mr. Tudor Price went to Mexico in March in connection with this potential sale, and when he returned he sent a memorandum dated March 17, 1977, to G. Choquette. In that memorandum he advised that CONASUPO had just purchased 25,000 metric tons of skim milk powder (not the same order for which the Canadian Dairy Commission had submitted an offer) from the Dairy Board of the Irish Republic, and stated further as follows:

“It appears that the Irish were able to make this sale because they and, more particularly, their Mexican agent, were able to keep in far closer contact and place more pressure on the new and relatively inexperienced team at CONASUPO than C.D.C. is able to do with such a limited marketing staff and no agent in Mexico.

“Since CONASUPO is such an enormously important market for us (about 35,000 metric tons per annum) the risks of continuing to operate as we do now appear very great and the Commission may wish to consider a reinforcement of its marketing effort in Mexico through the use of agents.

“It would be contrary to the present C.D.C. policy of maintaining a viable private sector in dairy product exports for C.D.C. to hire a Mexican agent direct. The hiring of a Canadian agent on the understanding that he will concentrate his efforts in Mexico either through direct efforts or through the hiring of a Mexican sub-agent would be consistent with present policy...

“Perhaps you would be kind enough to give this matter your consideration.”

(See Evidence Statement of Gilles Choquette, paragraphs 25 to 27, Memorandum, R. Tudor Price to G. Choquette, March 17, 1977 — Exhibit 103).

3. Mr. Gilles Choquette in his evidence describes the next sequence of events as follows:

“In April 1977, I went to Mexico;

“A meeting was organized with the senior Directors of CONASUPO before finalizing the sale of 25,000 metric tons of skim milk powder;

“Following my refusal to meet at the suggestion of the Mexicans with a Mr. Nordermann, who was supposed to serve as an agent for the Canadian Dairy Commission, the meeting and the sale of skim milk powder were cancelled.

“Nevertheless, I was able to meet for a few minutes with the Director General of CONASUPO who received me coldly.”

4. On April 22, 1977, following his return from Mexico, Mr. G. Choquette went to see Mr. James R. Midwinter, then a senior official in the Privy Council Office. He had requested the meeting by telephone. Mr. Midwinter recorded the matters discussed at the meeting in a memorandum prepared immediately after the meeting. The salient points in this memorandum are as follows:

(a) Mr. Choquette sought the meeting “to report, in more detail, a potential impropriety in the Canadian Dairy Commission’s sales arrangements in Mexico”

(b) The business between the Canadian Dairy Commission and CONASUPO in the past had been “clean”, but “Now, however, individuals in, or associated

with, CONASUPO have told C.D.C. that sales should be processed through a Mexican agent to be named by them. C.D.C. is currently quoting milk powder at 16.5¢/lb. The arrangement is that they would bill at a higher price with the difference, representing about 3.5%, going to the agent for appropriate distribution. There would be a similar margin on sales of butter oil. On 25,000 tons of skim milk powder and 2,000 tons of butter oil which is currently at issue, the pay-off would be in excess of \$400,000.” “(Possibly one quarter of the commission could be justified in terms of a legitimate percentage on sales, handling of documents, inspection of shipments and so forth, the rest being clearly an unearned bonus for someone.)”

- (c) Mr. Choquette reported that he had been informed in Mexico that if the Canadian Dairy Commission did not conform it would be phased out as a preferred supplier of skim milk powder.
- (d) Mr. Choquette advised Mr. Midwinter that he did not wish to have the Canadian Dairy Commission enter such an agency arrangement, but wondered about the possibility of selling to a Canadian exporter at 16.5 cents per pound “leaving it to the exporter to make his own arrangements, whatever these might be, with the Mexicans”. “The firm he has in mind is Ault Foods Limited. . . Ault apparently have been selling milk products in Mexico for the last few years and a possibly plausible argument could be made that they were a more effective sales vehicle for the C.D.C. than its own employees”. “Choquette would like to do business with Ault. . . If the C.D.C. did sell to or through Ault, it presumably would state in response to any inquiry that it was prepared to sell at that price to any Canadian exporter.” (See: Memorandum of James R. Midwinter, April 22, 1977 — Exhibit 174A)

5. Mr. Midwinter advised Mr. Choquette, on the basis of the strictures contained in the Government Guidelines for Crown Corporations, that the Canadian Dairy Commission should not knowingly have any part of any arrangement that would result in improper payments being made in Mexico. He also recommended, by letter dated May 9, 1977 to Mr. Choquette, that if the Canadian Dairy Commission decided to use an agent in connection with its sales to CONASUPO it “should ensure that all reputable

Canadian exporters had an equal opportunity themselves to participate according to ordinary commercial practices”. Mr. Midwinter concluded his letter of May 9 as follows:

“If I understood you correctly, the Commission would continue to sell directly to CONASUPO at its going export price but would engage a Canadian agency to service the business in return for a commission of the order of three per cent. Unfortunately, such an arrangement would still not place the Commission at arms-length and would not be within the guidelines unless the agency selected as the Commission’s representative could account, in a proper way, for the expenses incurred in the earning of its commission. Needless to say, the Commission would have difficulty in explaining why it now needed to have an agent to conduct business which it had itself been carrying out successfully without a middleman.” (See: Letter from Mr. Midwinter to Mr. Choquette, May 9, 1977 — Exhibit 176)

6. A Canadian Dairy Commission Minute dated May 10, 1977, which was actually prepared by Mr. Tudor Price on May 18, 1977, records that the Commission’s major competitors in the Mexican skim milk powder import market, namely, New Zealand, Australia and Ireland, all used agents in making sales to CONASUPO and that the Canadian Dairy Commission had decided to do likewise “at least for one year”. It concluded as follows:

“The Commission resolved to select the agent(s) used according to the following criteria:

- (a) The agent(s) selected shall be Canadian, or if a company or cooperative, Canadian-owned as defined in the Foreign Investment Review Act.
- (b) The agent(s) shall be experienced in the export marketing of dairy products from Canada.
- (c) The agent(s) shall have shown competence in dealing with CONASUPO, Mexico or with a similar organization in an overseas country buying dairy products from Canada.
- (d) The agent(s) shall be willing to provide the services which C.D.C. requires in its efforts to sustain and improve C.D.C.’s market share in the Mexican dairy products market.
- (e) Canadian traders shall be asked to submit in writing applications to partici-

pate and only those that do so on the time-scale requested shall be considered.

- (f) C.D.C. shall select the agent(s) on merit on the basis of the written submissions and such other interviews and discussions as the Commission may judge necessary.
- (g) The agent(s) selected shall be required to enter into a contract with C.D.C., prepared in conformity with Treasury Board guidelines for use of agents by Crown Corporations."

7. On May 11, 1977, the Canadian Dairy Commission sent identical telexes to fifteen Canadian traders, including Schafer Bros. Ltd., Ault Foods (1975) Ltd., Ronald A. Chisholm Ltd., Eastern Townships Produce Ltd., and the Granby Co-op, inviting applications for the opportunity to assist the Commission in its marketing of Canadian dairy products in Mexico. With respect to the criteria for selection, the telexes stated as follows:

"The Commission expects to select trade assistance on merit, taking into account:

A. What assistance you indicate in your written submission you can provide and

B. Experience and competence in providing such services in Mexico or similar situations involving dairy products." (See Exhibit 12, pp. 1113, 1115)

Fourteen applications were received, including applications from each of the above-named traders.

8. A Canadian Dairy Commission staff memorandum prepared on or about May 19, 1977, states that of the applicants, four met all the criteria set by the Canadian Dairy Commission: Ronald A. Chisholm, Ltd., Eastern Townships Produce Ltd., Granby Co-op and Ault Foods. Ault was stated to be recommended by the Commission staff because of its recent and close relationships with CONASUPO. (See: Exhibit 40)

9. A Canadian Dairy Commission Minute dated May 20, 1977, records that Ault Foods was selected as the Commission's agent and the other thirteen applications were refused. (See: Exhibit 12, Volume 6, p. 1155)

10. By a reporting memorandum to the Minister of Agriculture dated May 31, 1977, Gilles Choquette stated that an agent was required to meet the competition in the important Mexican market. Pertinent excerpts from that memorandum are as follows:

"New Zealand, Australia and Ireland are maintaining resident representatives who are in contact with CONASUPO. The resident agent is available at all times to recognize

opportunities and advise on the availability of product from Canada, discuss specifications and quality and other related matters, thereby facilitating maximum access for Canadian product to the Mexican market.

"The recent change in the Mexican Government has brought with it a different approach to the situation which prevailed before in which the state trading agency CONASUPO dealt directly with the Canadian Dairy Commission. The new staff in CONASUPO are not yet fully familiar with the business and depend more on agents for information....

"It is also a fact that the previous direct trading was initiated at a time when competition was less severe and there was a shortage of product on the world market.

"CONASUPO, in its letter of April 14, 1971, addressed to the Chairman of the Canadian Dairy Commission, stated its interest in direct trading with C.D.C. as follows:

'In view of the short supply of dehydrated milk existing around the globe, we are very interested in reaching Government to Government import agreements with Canada through your Commission whose legal aims coincide with Mexican law applicable to CONASUPO'

"The Commission requires assistance from an agent to give the best quality of service to its customer in respect of rapid service in dealing with quality complaints, delivery schedule, presentation of documents, rapid receiving of moneys due, and other services which are necessary to present a good image for Canadian products sold to Mexico. The Commission also needs information on pricing and activity of competitors to maximize its effectiveness. The Commission has recently experienced quality complaints from CONASUPO in respect of burnt particles in skim milk powder and excessive peroxide values in butter oil which require ongoing and daily attention to sales and service which the Commission is not equipped to supply without the services of an agent.

ECONOMIES ACHIEVED THROUGH THE USE OF AN AGENT

One economy is achieved through dovetailing C.D.C. purchases with shipments to Mexico. This streamlining of operations will permit shipments to be loaded directly from the first warehouse which will result in a saving of

56¢ per hundred pounds of skim milk powder or \$12.35 per M.T. On a total expected business of 30,000 M.T., this economy amounts to \$370,500. "Prompt receipt of payment due to C.D.C. which would be arranged by an agent will reduce interest costs. Based on the customary \$2,000,000 cheque, this saving is approximately \$500 per day.

"The major economy achieved through the use of an agent could be the retention of the Mexican business at current price for human use of 16.8¢ per pound rather than a price of 10¢ for feed use. On the basis of an expected volume of 30,000 M.T. (66 million pounds) this economy will amount to \$4.5 million.

"In addition, if the Mexican market should not materialize, the chances are that additional typical storage and interest charges will be incurred by the Commission. At a rate of \$3.52 per M.T. per month for storage, and \$2.86 per M.T. per month for interest (on 16.8¢ powder) a total of \$6.38 per M.T. per month will be incurred. On a volume of 30,000 M.T., this would be \$191,400 per month, and for a 6 month period the cost would amount to \$1.1 million."

11. Although negotiation of the details of the contract between the Canadian Dairy Commission and Ault Foods (1975) Ltd. took some time, and the contract was not executed until August 17, 1977, Ault Foods began serving as the Commission's agent immediately after May 20, 1977. It also began utilizing Mr. Nordermann's company, Intercontinental de Mexico, S.A., as its local Mexican agent immediately, so the agency commissions were paid on a basis which included a commission on a large sale made shortly after May 20, 1977.

12. The contract between the Canadian Dairy Commission and Ault Foods (1975) Ltd. described Ault as a "non-exclusive commercial representative". It also expressly stated that Ault was not a "legal agent" of the Canadian Dairy Commission. Ault was to provide its services only with respect to "Specified Sale Transactions", defined as being such "specific sale transactions between the C.D.C. and CONASUPO as the C.D.C. in its discretion may expressly specify in writing". Ault was to be paid for its services at the rate of 3.326% of the value of the products delivered pursuant to Specified Sale Transactions. It was not to hire any sub-representative to carry out any of its responsibilities without the prior written authorization and consent of the Canadian Dairy Commission.

Paragraphs 7 and 8 of the contract read as follows:

"7. Ault warrants that while providing services to CDC pursuant to this Contract it:

- (a) shall not directly or indirectly take any action in connection with transactions under this Contract which violates the laws of Canada or the laws of the country in which those transactions take place;
- (b) render or accept any bribe or other improper benefit;
- (c) apply improper influence to any person or authority;

8. Ault undertakes to comply with the Policy and Guidelines concerning the commercial practices of Crown Corporations of the Government of Canada, a copy of which is attached to the present Contract as Annex 'A' and fully accepts that CDC will comply with these Policy and Guidelines as well."

The Guidelines referred to, as attached to the contract, read in part as follows:

"THE COMMERCIAL PRACTICES OF CROWN CORPORATIONS"

1. In the process of doing business, officials of Federal Crown corporations shall not, directly or indirectly:

(1) take any action in Canada that is not in accordance with the laws of Canada, or take any action outside Canada that violates the laws of the place where the transaction occurs, or that if taken in Canada would be in violation of the Criminal Code of Canada;

(2) render or accept any bribe or other improper benefit;

(3) apply improper influence.

2. In retaining sales and procurement agents, Crown corporations shall adhere to the following:

(1) Selection

Crown corporations must adopt an established selection process to ensure that the agents' qualifications for the work are clearly established and evaluated.

(2) Contracting

a. Agency agreements shall be formally written and shall include specific undertakings by the agents to act in accordance with the laws of the place where the transaction occurs.

- b. Remuneration under the Agreements shall be based on justifiable and sound business practice.
- c. Payments shall be strictly in accordance with the formal written agreement."

(See: Exhibit 12B, pp. 1824-32)

13. By letter dated August 22, 1977, the Canadian Dairy Commission formally approved the appointment of Intercontinental de Mexico, S.A. (Mr. Nordermann's company) by Ault Foods (1975) Ltd. as its "sub-agents" in Mexico for the purposes of the contract. (See: Exhibit 12A, p. 1641)

14. Of a total commission of \$15.20 per metric ton paid by the Canadian Dairy Commission to Ault Foods, \$13.00 was paid by Ault Foods to Intercontinental. (See: Testimony of Mr. S. Ault, Transcript p. 4197)

15. Ault Foods (1975) Ltd. served as the Canadian Dairy Commission's agent on all its sales of skim milk powder to CONASUPO until 1979, since which time the Commission has dealt directly with Intercontinental de Mexico, S.A. as its agent in Mexico. Even while Ault was serving as the Commission's agent, many of the Commission's contacts were direct with Intercontinental.

16. Messrs. Gilles Choquette, Richard Tudor Price and Samuel Ault all testified that they had no reason to believe that any improper payments were ever made in Mexico in connection with sales or potential sales by the Canadian Dairy Commission of skim milk powder to CONASUPO.

So much for the summary of the evidence without making any findings as to its accuracy.

Interviews with the Mexican witnesses, held in October 1980, provided additional information relating to the events in 1977:

- (a) The evidence given by Dr. Barry was confirmed to the effect that the Canadian Dairy Commission did not use an agent in connection with its sales to CONASUPO during the years 1971 to 1976 and that it was able to function perfectly well without an agent during this period.
- (b) Many of the new senior personnel at CONASUPO who took office in late 1976, including the Director and other officials, continued in office for about one year and a half. Apparently while they were in office, the administration of CONASUPO fell into some disarray. Great difficulties were experienced by all persons attempting to do business with

CONASUPO. Without discussing some of the reasons for this, it is sufficient to state that the Government of Mexico at that time felt compelled to, and did, replace the Director General and certain other senior officials at CONASUPO by restoring to office the previous Director General and certain other officials who had held office with CONASUPO prior to 1976. Since the restoration of these persons to office, the administration of CONASUPO vis-à-vis exporters and otherwise apparently has been satisfactory. Since 1978, certain of the more minor officials who had been in office during that one and a half year period ('76-'78) have been charged in the criminal courts in Mexico for certain acts done during their terms of office with CONASUPO.

- (c) Mr. F. Arguelles, commercial officer with the Canadian Embassy in Mexico City said that the role of agents in the sale of skim milk powder to CONASUPO had changed from the mid-1960's when the private sector competed for sales to CONASUPO. He said agents used to be more active in seeking sales and negotiating contracts than they now are. Now, the work of an agent in connection with import sales into Mexico by CONASUPO of skim milk powder is mostly in the processing of the bills of lading and other documents, and in the delivery of the product pursuant to contracts that are negotiated directly between CONASUPO and foreign government agency suppliers.

My conclusions as to the two allegations made by Schafer Bros. Ltd. regarding this matter, based on the documentary and oral evidence are as follows:

- (a) The Canadian Dairy Commission was entitled to establish the process recorded in the documents for choosing an agent, and it was not incumbent on it to inform the public of the criteria and process of selection.
- (b) Regardless of why Ault Foods (1975) Ltd. was selected, there is no evidence of improper discrimination against Schafer Bros. Ltd. on the part of the Canadian Dairy Commission in appointing Ault Foods (1975) Ltd., or of any improper preference being given Ault Foods (1975) Ltd. There is no ground for believing that Ault Foods (1975) Ltd. was an unreasonable choice from among all the applicants for the work of assist-

ing the Canadian Dairy Commission in marketing its products in Mexico. By stating the above conclusions as being the only conclusions permitted by the evidence, I do not suggest that everything about the events in 1977 was completely explained by the evidence. As to this, for example, Mr. Timothy Chisholm, the President of Ronald A. Chisholm Ltd., stated in evidence:

"... with respect to the particular selection of its exclusive agent in 1977, (Ault Foods (1975) Ltd.), I acknowledge that this company had experience in exporting ingredients for infant formula to CONASUPO, but would question the selection of this particular company to export skim milk powder to CONASUPO, since it had never had dealings with CONASUPO in this commodity in the past, and indeed had no experience in bulk exports of skim milk powder to any country. We therefore found their appointment by the Canadian Dairy Commission to be, at least, surprising, the use by Ault of a Mexican agent mystifying, and the financial arrangements between Ault and its Mexican agent even more mystifying."

As an example, the reason why the contract with Ault Foods (1975) Ltd. was structured as it was, was not fully explained, envisaging as it did the use by Ault of a Mexican agent, which Mexican agent would have no duty to account to the Canadian Dairy Commission for his costs and activities. As to this, in view of publicity in 1976 regarding certain other Crown Corporations which gave rise to the establishment of the Guidelines and to an amendment to the Criminal Code, in view of Mr. Choquette's meeting with Mr. Midwinter, and in view of the time it took to negotiate and draft the Canadian Dairy Commission's contract with Ault, one would have thought that more care would have been taken to provide for adequate controls in this contract.

Notwithstanding the above conclusions as to Allegations B.5 and B.8, it is necessary before leaving them to make these further comments:

The nature of Allegations B.5 and B.8 required that the "criteria and process" used in the selection of Ault Foods as agent be identified, and that the basis for the preference of Ault Foods be explored. The content of Mr. Midwinter's discussions with Mr. Gilles Choquette were obviously relevant for this purpose although, equally obviously, not conclusive inasmuch as they occurred prior to the dates of the Canadian Dairy Commis-

sion's documentation regarding selection of an agent.

Because Mr. Gilles Choquette denied in evidence that he had said to Mr. Midwinter the sorts of things that Mr. Midwinter recorded in his memorandum of April 22, 1977, as set out above, regarding what Mr. Choquette had been told in Mexico and regarding a preference at that time for Ault Foods, and because Mr. Choquette was quite definite in his denials on each of two separate occasions when he testified, it was necessary to hear further testimony. The purpose of such further testimony was to establish whether or not Mr. Choquette had said to Mr. Midwinter what Mr. Midwinter had recorded in his memorandum as having been said, and not to determine whether or not what was recorded was true.

As to whether or not Mr. Choquette said what Mr. Midwinter's memorandum recorded that he said, and at the request of counsel for the Canadian Dairy Commission, Mr. Midwinter was called to testify. Mr. John Tait and Mr. Steven Rosell, two other officers of the Privy Council Office who were present during different portions of the meeting between Mr. Midwinter and Mr. Choquette, were also called to testify. Mr. Midwinter reaffirmed the accuracy of his memorandum in every respect. Mr. Tait, who had been present during the first portion of the meeting had made his own notes of the portion attended by him. His notes were filed in evidence and confirmed the accuracy of the record made by Mr. Midwinter. Mr. Rosell did not make any notes of the portion of the meeting attended by him when he replaced Mr. Tait at the meeting, but he did review Mr. Midwinter's memorandum after the meeting, on the same day as the meeting, and testified that he recalled being of the view at the time that Mr. Midwinter's memorandum was accurate insofar as he could judge from the portion of the meeting attended by him.

My conclusion in respect to this further matter is that the evidence given by Mr. Midwinter, Mr. Tait and Mr. Rosell, including the notes of Mr. Tait, and also the information received from the interviews with the witnesses in Mexico City, support unequivocally the accuracy of Mr. Midwinter's memorandum and the evidence given by each of Messrs. Midwinter, Tait and Rosell. Mr. Choquette's evidence in this regard, insofar as it conflicts in any material way with the evidence given by Messrs. Midwinter, Tait and Rosell, or with Mr. Midwinter's memorandum dated April 22, 1977, is disbelieved.

This finding as to credibility is not, of course, to be taken as making a finding as to whether or not anything improper actually took place. No proof was adduced that there was any conspiracy involving any official of the Canadian Dairy Commission or any other person in Canada to commit in Canada a breach of foreign law. Nor was there any proof that the Guidelines were violated, although the contract between the Canadian Dairy Commission and Ault Foods was structured in such a way that improper payments could have been made in Mexico without the knowledge of the Canadian Dairy Commission, its officers or employees.

Finally, as to whether or not any person in Mexico breached any Mexican law in connection with any part of any sale of Canadian skim milk powder by the Canadian Dairy Commission to CONASUPO, it was understandably not within the mandate of this Commission of Inquiry to attempt to make such an investigation. In saying this, it is not to suggest, nor should one infer, that there was any proof before this Commission that any such offense did occur.

26. *Allegation B.6*

Allegation B.6 reads as follows:

"The C.D.C. did not take specifications of importing countries adequately into account when adopting measures for the development of the domestic dairy industry."

The only evidence pertinent to this allegation is the evidence in respect to the 770 ton sale of skim milk powder to CONASUPO made by Schafer Bros. Ltd. in 1969 (see Allegation A.4).

As referred to above, the problem was that the Canadian Dairy Commission at that particular time did not have an adequate record system so as to be in a position to properly inform the private sector or others of its inventory characteristics so that they could be in a position to adequately satisfy the specifications of importing countries.

There was no evidence to suggest that the Canadian Dairy Commission does not continually revise its purchasing requirements and inventory records, as appears to it to be necessary from time to time in order to enable it to continue to best serve the requirements of Canada's export customers. This does not mean there might not be some time lag between identifying a new need and reflecting that new need in its procedures.

The conclusion therefore is that there is insufficient evidence to support this allegation.

27. *Allegation B.7*

Allegation B.7 reads as follows:

"In 1969 the C.D.C. had in its stocks skim milk powder which contained bacteria characteristics substantially outside the C.D.C.'s own purchasing requirements."

This allegation was added at the request of counsel for Schafer Bros. Ltd., and appears to have been based largely on the bacterial characteristics of powder supplied by the Canadian Dairy Commission for Schafer Bros.' 770 ton sale to Mexico in 1969.

More time was taken in adducing evidence in respect of this allegation than was warranted. The allegation is a minor one.

The evidence adduced was inconclusive.

There was some conflict in the evidence as to the nature and purpose of the tests performed on samples of this powder on behalf of Schafer Bros. Ltd. by Mr. Henri Trochu, a chemist with Les Laboratoires Industriels et Commerciaux Limitée. The samples of skim milk powder were supplied from various warehouses in Ontario and Quebec. Mr. Trochu said that on ten occasions between February and May 1969, he analyzed a total of 86 samples of dried milk powder "in order to estimate and quantify the presence of bacteria and undenatured whey protein." The copies of his reports to Schafer Bros. Ltd. on the samples provided, appended to his evidence statement, indicate bacteria levels per gram ranging from 8,000,000 to 525,000,000.

On cross-examination by counsel for the Canadian Dairy Commission, Mr. Trochu said that the tests carried out were plate count tests, as opposed to tests for direct microscopic clump count (DMCC). A plate count measures levels of live bacteria while a DMCC measures combined levels of live and dead bacteria, and the two tests are different.

A manual entitled "Standard Methods for the Examination of Dairy Products", filed as an Exhibit by counsel for the Canadian Dairy Commission during his cross-examination of Mr. Trochu, states that "Standards for dry milks include Standard Plate Count, coliform and direct microscopic counts." (p.154) After describing the method of preparation, the manual gives the following instructions for "plating, incubating and counting plates" (pp. 155-56):

"D. Plating, incubating and counting plates:
Incubate plates at 32°C for 48± 3 hours.
Count colonies in accordance with 5.11.
Since samples may contain appreciable numbers of aerobic spore formers, plates may contain spreading colonies that make it dif-

difficult to count colonies accurately. An overlay of 3-5 ml of sterile agar is reported to reduce the number and size of spreaders without significantly reducing the plate count. If undissolved particles of dry milk may be confused with colonies, verify identity of doubtful colonies under low power of the microscope.

E. Reporting results:

Report results as Standard Plate Count per gram of dry dairy product. Since determinations by the agar plate method do not reveal all the sanitary conditions of production, processing and storage, examination of samples using the direct microscopic method [14.4] and other microbiological analysis [10.3(G,H,I)] may be of value."

Immediately following, at paragraph F., are the instructions for performing a direct microscopic clump count.

"F. Direct microscopic count:

Because of the progressively lethal effect of processing and storage on microorganisms in dry milk, determination of the number of viable bacteria may not reliably indicate its previous sanitary quality or the sanitary handling of raw milk before drying. Direct microscopic examination of stained preparations of dry milks will give valuable additional information [14.4].

- 1) Preparing and staining films: with readily soluble samples, follow 10.3(G) (11 g of milk in a 99-ml water blank). Use a binocular microscope, 500,000-600,000 factor preferred [14.12], to count sufficient fields [14.14, 14.18] and insure proper illumination [14.11]. To avoid undissolved particles of casein in films prepared from less readily soluble samples, use 1.25% sodium citrate blanks for the 1:10 dilution. Apply the Levowitz-Weber single-solution stain [14.7]. Do not refrigerate stain, and discard it when precipitate or foreign matter appears. Make only direct microscopic clump counts [14.6], following the definition of 'clump' given in 14.18. Some cells stain poorly but must be counted if they are identifiable as microorganisms. It must be recognized that in single-sample comparisons, count differences between laboratories may be rather large.
- 2) Reporting results: Using an appropriate microscopic factor [14.12], multiply the count by 10 (to compensate for the 1:10 dilution), correct if necessary for the film

area used, and observe precautions [14.16]. Report results as Direct Microscopic Count per gram of dry milk."

Mr. Trochu said that all the results he reported to the Schafers measured live bacteria. He said that some of the higher results, such as 375,000,000 and 525,000,000 bacteria per gram were "quite high".

On cross-examination by counsel for Ronald A. Chisholm Ltd., Mr. Trochu said that a DMCC could be higher or lower than a plate count, and that, given the same sample of milk powder, the DMCC should be higher. He was not sure if the two tests could be performed on the same sample of milk, or if the sample might be destroyed in the performance of either test.

Dr. J.A. Elliott, a consultant in food microbiology, who prior to his retirement had been senior scientist with the Food Research Institute, in his evidence called into question the accuracy of Mr. Trochu's assertion that the tests he performed measured plate counts. Dr. Elliott stated that "unless a standard place (sic) count is done very carefully by someone skilled in microbiological methods, significant errors can occur." He said further that:

"A 525 million standard plate count is typical of such products as yogurt and some buttermilk. An ordinary milk sample would have to be literally fermenting to generate a count this high."

Dr. Elliott said that in a good laboratory with competent personnel, one would expect repeatability of perhaps 20%, plus or minus 20%; however, the errors inherent in biological testing are rather large and one might meet with errors as high as 100%. He nevertheless said that he did not consider it possible to obtain plate counts as high as those reported by Mr. Trochu, which he said were typical of fermented dairy products.

On cross-examination by counsel for Schafer Bros. Ltd., Dr. Elliott said that it would be impossible to obtain Mr. Trochu's results for a standard plate count, but that they were typical of DMC counts. He said that he could, in fact, think of no other test performed on skim milk powder that would yield such results.

In any event, Mr. Trochu's confusion over what tests he did perform in itself casts doubt on the accuracy or reliability of his results.

The allegation therefore that in 1969 the Canadian Dairy Commission had in its stocks skim milk powder with bacteria characteristics substantially outside the Canadian Dairy Commission's own purchasing requirements is not proven.

28. *Allegation B.8*

Allegation B.8 reads as follows:

“The C.D.C. showed preference to certain Canadian exporters of skim milk powder other than Schafer Bros. Ltd. by storing surplus milk powder in these other exporters’ warehouses, by naming some of them to the Consultative Committee, by appointing them marketing agents of the C.D.C. for certain international markets, and by suggesting their names as potential beneficiaries to other Canadian Government Departments and international clients.”

This allegation was one of the allegations added at the commencement of the hearings at the request of counsel for Schafer Bros. Ltd.

The evidence disclosed that the Canadian Dairy Commission did store the skim milk powder which it purchased from the manufacturers in those manufacturers’ warehouses. The Canadian Dairy Commission apparently had no warehouses of its own.

Schafer Bros. Ltd. was not a manufacturer of skim milk powder. It had no warehouses for such storage.

There is no evidence that the Canadian Dairy Commission showed any preference to those manufacturers who had warehouses. Some of the manufacturers also happened to be exporters besides being manufacturers of skim milk powder.

As to the Canadian Dairy Commission showing preference by naming some Canadian exporters to the Consultative Committee, the Canadian Dairy Commission had no power to name. That is the prerogative and responsibility of the Minister under Section 5 of the *Canadian Dairy Commission Act*. In any event, there is no evidence whatsoever of any preference of this nature being given on any basis other than merit.

The part of the allegation that alleges that the Canadian Dairy Commission showed preference by appointing some marketing agents to certain international markets has been dealt with in connection with Allegation A.5 in respect to the appointment of Ault Foods (1975) Ltd.

As to the part of the allegation that the Canadian Dairy Commission showed preference by suggesting the names of certain Canadian exporters as potential beneficiaries to other Canadian Government Departments and international clients, there is some evidence by way of two or three letters that the Canadian Dairy Commission in response to some international inquiries for the names of certain exporters, did send to such inquirers a restricted list of names of private Canadian exporters. This may not be a good practice, but there is no evidence to support any suggestion that the Canadian Dairy Commission showed preference in any other way or that any harm was done on these two or three occasions. This is a *de minimis* matter.

The evidence therefore is that there is no basis for this allegation.

29. *Part II of the Statement of Allegations*

This Part reads as follows:

“As a result of the conduct referred to in Part I, above, Schafer Bros. Ltd. suffered losses and is entitled to be compensated for those losses.”

Based on the above findings as to the allegations contained in Part I of the Statement of Allegations, and also on the analysis of the claim for compensation made in Chapter V above, it is patent that Schafer Bros. Ltd. did not suffer any losses as a result of the conduct referred to in Part I and is not entitled to any compensation.

CHAPTER VII

THE ISSUES: STANDARDS OF LAWFULNESS AND FAIRNESS

(A) LAWFULLY

1. *Canadian Dairy Commission Act, Section 8*

When the Minister of Agriculture, the Honourable J.J. Greene, was speaking to the Canadian Dairy Commission Bill on second reading in June 1966, he stated:

"...It is not possible at this time to indicate, other than in a broad way, the manner in which the Commission will operate. The dairy industry is a complex and ever changing entity, and with these changes, different approaches will doubtless be needed on the part of the Commission. The legislation has been drafted to provide for sufficient flexibility to permit the Commission to meet the objectives set for it, despite changing structures in the Canadian dairy industry."

Section 8 is so vaguely drafted, however, that it provides little guidance to those responsible for administering it. The Governor in Council has not given any directions under Section 11 or passed any relevant regulations under Section 12. As a result a premium is placed on the sophistication and independence of the members of the Commission, especially to the extent that effective mechanisms for accountability on matters of policy are absent, to give more precise substantive content to Section 8 and to develop consistent policies in implementing the objects prescribed by Parliament.

Anyone who compares the evidence of Dr. Skeoch with that of the officials of the Canadian Dairy Commission, cannot help but be concerned as to whether the public interest has been or is being well served by leaving the Canadian Dairy Commission without any guidance in terms of long-run policy objectives. And the public interest goes well beyond the approximately \$300 million of public funds expended annually by the Canadian Dairy Commission.

Dr. Skeoch's evidence was introduced at the very opening of the Inquiry for the announced reason of providing the fullest opportunity to the Canadian Dairy Commission to respond to or explain any questions or matters raised by his evidence regarding policy matters. Yet the evidence of the Canadian Dairy Commission witnesses subsequently, as

outlined in large part in Chapter IV, above, causes one to wonder whether they even understood Dr. Skeoch's evidence, let alone had answers to the questions and criticisms he raised.

I do not question the bona fides of the Canadian Dairy Commission policy efforts and programs. However, without a long-term overall policy perspective there is no defense against the expediency of adopting short-term solutions.

The Canadian Dairy Commission appears to have acted largely in a vacuum so far as a long-run policy perspective is concerned. It appears to regard concepts of efficiency, fair return and adequate supply as independent of each other and as having meaning only in terms of short-term tools such as target return formulae, production goals and statistics. The Canadian Dairy Commission does not appear, for example, to recognize any inconsistency between cost justification formulae or price support programs and efficiency, or between production quotas and efficiency or adequate supply. Nor does the Canadian Dairy Commission appear to take any account of general national economic policies such as those favouring open market economies.

I assume that the formal written submissions filed by counsel for the Canadian Dairy Commission at the conclusion of the Inquiry reflects at least in some degree the position of the Canadian Dairy Commission. The banality of those submissions regarding Section 8, some of which are as follows, is disturbing:

"Dr. Skeoch, not a trained lawyer, is not an expert with respect to statutory interpretation."

"... one knowledgeable about a particular type of farming enterprise has only to watch farmers of that kind for a while in order to determine 'which are more efficient and which are less so. Thus the ordinary language meaning of 'efficient producer' is not defined in market terms, and the ordinary meaning of the term is what the law looks to..."

"The word 'fair' in 'fair return' is clearly a moral term (in fact 'efficient' and 'adequate' may also be) and thus cannot be defined in empirical, factual terms. A fair return to the producer is simply the return a producer is entitled to, or the return that he ought to get."

In view of the findings of fact regarding the allegations made by Schafer Bros. Ltd. there is no need to deal with certain of the Issues defined in Exhibit 8, which read in part:

"2. If the allegations contained in Part I of the Statement of Allegations, or any of them, are true:

- (a) Were the policies, practices and controls that were employed by the Canadian Dairy Commission consistent with the objects of the Canadian Dairy Commission as prescribed by section 8 of the *Canadian Dairy Commission Act*, R.S.C. 1970, c.C-7, and were they within the powers of the Canadian Dairy Commission as conferred by section 9 of that Act?
- (b) Were such policies, practices and controls necessary to achieve the objects of the Canadian Dairy Commission as prescribed by section 8?
- (c) Were the powers of the Canadian Dairy Commission exercised within the framework of any general policy or criteria adopted to achieve the objects of the Canadian Dairy Commission as prescribed by section 8?

Notwithstanding there being no need to deal with the above-stated issues with reference to the Order in Council which directed an Inquiry to be made as to whether anything unlawful or unfair had been done vis-à-vis Schafer Bros. Ltd., it is appropriate to note that speaking generally and having regard to the evidence adduced, the vagueness of Section 8 would perhaps lead one to conclude that virtually nothing done in a bona fide attempt to achieve the objects of Section 8, however inadequate or misguided those attempts might be, could be condemned as unlawful. But this is not to say or to conclude that the language of Section 8 does not permit the Canadian Dairy Commission to adopt policies and to act in a more adequate and competent way so as to achieve the objects of Section 8 as contemplated by Parliament in enacting the Section.

2. *Appropriation of Goodwill*

The allegations of Schafer Bros. Ltd. as articulated by David Schafer were to the overall effect that by the late 1960's, after many years of regular and expensive promotional work with CONASUPO and its predecessor organization in Mexico, Schafer Bros. Ltd. was on the threshold of a profitable business relationship with CONASUPO, and that the Canadian Dairy Commission destroyed those prospects by activities as set out in the Statement of Allegations.

As articulated in part by Michel Choquette in his letter to Gilles Choquette dated July 25, 1977 (Exhibit 6, Volume VI, pp. 8-9), these general allegations were as follows:

"That due to the exclusive arrangement which was subsequently reached between CONASUPO and the Dairy Commission,

the latter announced in 1971 that it was discontinuing milk powder export subsidies for sales to Mexico, thereby definitively expropriating the market which Schafer Bros. had been so instrumental in creating;

"That after more than 10 years of hard work and 21 trips to Mexico, they were left with absolutely nothing to show for their efforts;

"That in addition to the specific sales, the potential future business and the time which they lost, the Schafers also lost the total amount of their investment;

"That they would never have devoted all this time and money to the Mexican venture had they not been led to believe all along that they would have the Dairy Commission's full support if they succeeded in interesting the Mexican Government in purchasing in Canada;

"That the situation is, in fact, a good deal worse than that, since the money which the Schafers invested in this endeavour represented most of their capital;

"That the loss of this capital, combined with the resultant loss of credibility in financial, banking, trade and government circles here and abroad, has almost totally incapacitated their firm;

"That Schafer Bros., which had at one time been one of the most important privately-owned grain and seed firms in Hungary and leader in foreign trade, and which was well on its way to becoming a very successful Canadian exporting house even though it had had to begin again here from scratch, has, since experiencing its difficulties with the Canadian Dairy Commission, barely been able to survive;"

There are three key questions, and they will be considered in order:

- (a) Did CONASUPO become interested in buying Canadian skim milk powder in the late 1960's as a result of the efforts and expenditures of Schafer Bros. Ltd.?
- (b) If the Canadian Dairy Commission had stayed out of the business of selling direct to CONASUPO, would the business have gone to Schafer Bros. Ltd.?
- (c) Did the exclusion of Canadian private traders from the CONASUPO business as of 1971 result principally from a decision by the Canadian Dairy Commission?

These questions have all been considered one way or another in Chapter VI, but a brief summary of what the evidence disclosed is useful here.

As to the first question, David Schafer did not know until this Inquiry was held that other Canadian traders were also active in Mexico during the 1960's while he was there. Those other traders also met with Messrs. Rodriguez Licea and Rodriguez Ayala and, in fact, some sales were made by those other traders before the Schafer Bros. Ltd. first and only sale of Canadian skim milk powder to CONASUPO in January, 1969. Further, broad factors of supply and demand appear to have been one of the principal determinants of shifts in trading patterns, influenced by the increase in the Canadian export subsidy which was admitted by David Schafer to be a major factor. A final item to note is that the visit of Dr. Barry and Mr. Goodwillie in the fall of 1967 appears to have been important in paving the way for the general solicitation of Canadian offers by CONASUPO in January 1968.

The answer to the first question is, therefore, that the efforts of Schafer Bros. Ltd., while they may well have played a small part, were in no sense unique, major or determinative.

As to the second question, Schafer Bros. Ltd. laid great emphasis on its belief that it was the only private Canadian trader to have been invited to bid in January, 1968. This would have been relevant had it been true. The evidence shows, however, that at least three or four other Canadians, apart from Schafer Bros. Ltd. and the Canadian Dairy Commission, were invited to submit offers. The actual invitation to Granby Co-op is among the exhibits of the Inquiry. A further document in evidence (Exhibit 12, page 160), also unknown to Schafer Bros. Ltd. prior to the holding of the Inquiry, is a letter dated January 19, 1968, from Mr. Rodriguez Licea to the Canadian Embassy in Mexico stating in part as follows:

"To fulfill our annual requirements of milk powder, we usually enter into only one buying operation for about 25,000 metric tons, based on the requirements set down by this Institution in its booklet "GENERAL CONDITIONS FOR THE PURCHASE OF MILK POWDER", copy of which is attached.

"We have brought the foregoing to your attention requesting that you advise the officials of your government in charge of these matters or the producers and suppliers of milk powder, as we are now beginning our programme for the supply of our requirements for the year 1968.

"We would be grateful if you would inform the interested parties that from this moment

we are prepared to receive their offers, by telex if desired, indicating their best price and their acceptance of each and every condition required by CONASUPO as set out in the Instructions sent to you with this letter.

"We would like to clarify that the instructions mentioned in the Instruction sheet under reference are in no way limiting and your offers may extend or improve our conditions.

"After the price conditions and quality offered by all the providers we have invited to quote have been analyzed, this Institution will inform the interested parties of its final decision."

It was, further, established by the evidence that CONASUPO contacted directly all producers and suppliers who were registered with it.

As for the January, 1969 sale by Schafer Bros. Ltd. to CONASUPO, Mr. Rodriguez Ayala explained to the Commission of Inquiry in Mexico that there was a difference between small contracts and large contracts, which has been referred to above in this Report. Mr. Rodriguez Ayala said that Schafer Bros. Ltd. was given the contract on the small 770 ton order partly to test the ability of the company to perform satisfactorily pursuant to a contract of purchase and sale. Also, it being a small contract, the Purchasing Department at CONASUPO had authority to award it without the approval of the Director General and other senior officials at CONASUPO. This difference between large and small contracts is confirmed by the fact that although CONASUPO was satisfied with the performance of Schafer Bros. Ltd. on this January, 1969 contract, CONASUPO did not award the large contract three months later to Schafer Bros. Ltd., but instead bought Canadian skim milk powder from other private sources that offered a lower price.

Mr. Schafer believed that he had a unique personal relationship of mutual trust and confidence with certain senior personnel in the Purchasing Department of CONASUPO, and that this would have led to his getting future business. Three things should, however, be noted. It was not such a close relationship that he was advised of the October, 1967 meetings with the Canadian Dairy Commission, or of the invitations to other Canadian suppliers in January, 1968. Second, he did not get the 1969 contract. Also, and in any event, the people Mr. Schafer knew best in CONASUPO left CONASUPO in 1970 with the change of government in Mexico.

Further in connection with the second question, it should be noted that the personal philosophy of monopoly rights of David Schafer and George Schaffer, and their view of the limited role that was proper

for the Canadian Dairy Commission, referred to above in this Report, is quite foreign to Canadian public policy. Dr. Skeoch touched on this, too, in his evidence, and stated that he could see no objection to the Canadian Dairy Commission competing with the private sector in the supply of skim milk powder.

The answer to the second question is therefore "no".

With regard to the third question, it was made clear in the interviews the Commission of Inquiry conducted in Mexico City that the exclusion of the Canadian private sector in 1971 resulted from a change in Mexican Government policy. The new Mexican Government at that time implemented a policy of purchasing skim milk powder (and no doubt other products as well) only from other government agencies on a government-to-government basis, so to speak.

The answer to the third question therefore is also "no".

Notwithstanding the answers given to the above three questions, in view of the issues raised based on the allegations it is appropriate to review the law relating to this aspect of the claim for compensation.

The leading judicial authority on the subject of compensation for the taking or appropriation of goodwill by an act of government is *Manitoba Fisheries Limited v. Her Majesty The Queen*, [1979] 1 S.C.R. 101, the facts of which were essentially as follows. The plaintiff corporation had for forty years been in the business of purchasing fish from commercial fishermen in Manitoba, processing and packing them in its own facilities, and selling them to various customers in markets outside Manitoba. It was a highly competitive business and over the years the plaintiff had built up a very substantial clientele that preferred to buy from it. In 1969, however, Parliament passed the *Freshwater Fish Marketing Act*, which established a Crown agency known as the Freshwater Fish Marketing Corporation and provided, for all intents and purposes, that the said Crown agency had the exclusive right to market and trade in fish from participating provinces (which included Manitoba) in interprovincial and export markets. As of the date the legislation took effect, therefore, the plaintiff's customers perforce switched their business to the Crown agency, the plaintiff's business was extinguished and its plant rendered virtually useless. The plaintiff sued for a declaration that it was entitled to compensation.

It is important to stress two facts from the *Manitoba Fisheries* case. First, the plaintiff had goodwill in the sense of an established clientele of customers who, out of preference, kept returning to it for supply and who would in all probability have continued to do so had the legislation not been passed. Second, official action by or through the legislation was the cause of the loss of that goodwill.

Both the Federal Court trial division and the Federal Court of Appeal held that, although what had happened to the plaintiff was unfair, no action lay for harm resulting from the passage of the legislation.

The Supreme Court of Canada allowed the plaintiff's appeal and made a declaration that it was entitled to compensation for the fair market value of its business as a going concern in such amount as could be agreed or, failing agreement, as would be calculated by the Federal Court. It held that the case fell within the rule that unless the words of a statute clearly so demand, the statute ought not be construed so as to take away the property of a subject without compensation. The Court further held that goodwill, which existed on the facts of the case, was a form of property that came within the rule. There was also particular evidence in the case that made it appropriate to treat goodwill equally with plant and equipment.

It is not necessary for the purposes of this Inquiry to decide whether actions taken by the Canadian Dairy Commission within the statutory scope of its powers (at least in a literal sense) should be treated in the same manner as the passage of the legislation in the *Manitoba Fisheries* case. The facts of that case were essentially different from the facts before this Inquiry. Here, there was no such loyalty, preference or habit so far as CONASUPO's purchases were concerned that could reasonably be found to result in goodwill for any Canadian vendor, let alone for Schafer Bros. Ltd. Second, the failure of Schafer Bros. Ltd. to conclude contracts with CONASUPO other than the small January 1969 sale, and the unavailability of CONASUPO business to any Canadian private trader after April 1971, cannot be said to have resulted from actions or policies of the Canadian Dairy Commission.

Accordingly, the conclusion is that there is no legal basis under this heading by which a finding could be made that the Canadian Dairy Commission acted unlawfully.

3. *Tortious Interference with Business or Trade Interests*

As stated by Lord Denning, M.R. in *Torquay Hotel Co. Ltd. v. Cousins*, [1969] 1 All E.R. 522 at 530:

"... if one person deliberately interferes with the trade or business of another, and does so by unlawful means, that is, by an act which he is not at liberty to commit, then he is acting unlawfully, even though he does not procure or induce any actual breach of contract."

An action lies to recover damages caused by a breach of this rule. To similar effect see *Volkswagen Canada*

Ltd. v. Spicer et al (1978), 91 D.L.R. (3d) 42 (N.S. C.A.), and also *Acrow (Automation) Ltd. v. Rex Chainbelt Inc.*, [1971] 3 All E.R. 1175 (C.A.) where the actionable interference consisted of an unlawful refusal to supply.

The Manitoba Court of Appeal recently, in *Gershman v. Manitoba Vegetable Producers' Marketing Board*, [1976] 4 W.W.R. 406, applied this principle to the exercise of powers by a marketing agency. The facts of that case involved a marketing board, established under statute, using its powers in a discriminatory and vindictive way so as to harass, effectively blacklist and ostracize the plaintiff, who was a principal in a produce company. The plaintiff had apparently at one time challenged the legal authority of the Board and for this and other reasons was evidently not popular with the Board officials. It was an extreme case on its facts, resulting in an award of punitive damages as well as general damages against the Board, but the legal guidelines are of general application. They apply, for example, to the Canadian Dairy Commission, and although they have not been contravened based on the evidence before this Inquiry, a review of the principles may nevertheless be of interest.

Gershman's action against the Board was for malicious interference with contractual relations, but the Court of Appeal found that the separate torts of intimidation and unlawful interference with economic interests had also been committed by means of an abuse of the discretionary powers possessed by the Board, powers the Court described as "very wide powers, amounting to monopolistic powers."

(The tort of intimidation, which is irrelevant for the purposes of this Inquiry, consists of a threat to another person to do an unlawful act, as a result of which threat the other person does or refrains from doing some act which he is entitled to do, thereby causing damage to himself or to a third person.)

The tort of unlawful interference with economic interests, as indicated above and as described by the Manitoba Court of Appeal, consists of acting unlawfully with the object and effect of causing damage to another's business and trade interests. It does not require that there be established goodwill or that there be an actual existing contract.

The Manitoba Court of Appeal held that the Board acted unlawfully whenever it did not act in good faith, and that acts done for the principal purpose of prejudicing, punishing or blacklisting the plaintiff were acts of bad faith. The Court further reiterated the general principle that public bodies must not use their powers for purposes incompatible with the purposes envisaged by the statutes under which they derive such powers, and endorsed the following statement by the trial judge in that regard (p. 415):

"There are many government-sanctioned boards in existence now having exclusive jurisdictions to administer many facets of the economic life of our country, and as our life becomes more interdependent we will have even more such boards. These governmental boards are established to administer exclusively the many different economic programs in our society. They are established with noble aims and for noble purposes. . . glaring abuse of power. . . should not be allowed to pass without some assessment of. . . damages against it."

The Court also quoted the following excerpt from the judgment of Rand, J. in *Roncarelli v. Duplessis*, [1959] S.C.R. 121 at p. 140:

"It is a matter of vital importance that a public administration that can refuse to allow a person to enter or continue a calling which, in the absence of regulation, would be free and legitimate, should be conducted with complete impartiality and integrity; and that the grounds for refusing or cancelling a permit should unquestionably be such and such only as are incompatible with the purposes envisaged by the statute...

"...no legislative Act can, without express language, be taken to contemplate an unlimited arbitrary power exercisable for any purpose, however capricious or irrelevant, regardless of the nature or purpose of the statute...'Discretion' necessarily implies good faith in discharging public duty; there is always a perspective within which a statute is intended to operate; and any clear departure from its lines or objects is just as objectionable as fraud or corruption."

The Court further relied on law to the effect that discretionary powers must not be exercised in an arbitrary, vague or fanciful way.

None of these principles has been contravened by the Canadian Dairy Commission, its officers or employees vis-à-vis Schafer Bros. Ltd. according to the evidence before this Inquiry.

4. Discriminatory Treatment

As is evident from a review of the Statement of Allegations, a principal theme of the assertions made by Schafer Bros. Ltd. is that it was discriminated against by the Canadian Dairy Commission, its officers and employees.

For the purposes of this Inquiry, personal discrimination can be described as the giving of different treatment to competing exporters at the same or similar times with respect to comparable interests or dealings.

A public body, let alone one with the powers and the influence of the Canadian Dairy Commission in its sphere of market activity, is under a legal duty to act impartially and in good faith. The duty derives from common law and is independent of statute.

The duty on any such public agency is more comprehensive and strict than that on a private person. No matter how irritating a public official finds a particular member of the public to be, he is not entitled to prejudice or punish that person by means of the way he exercises or refuses to exercise any of his powers and discretion. The duty extends to all activities of the public official or agency, whether they relate to pricing, supply, the providing of information or other forms of dealings or relationships.

The primary instances where Schafer Bros. Ltd. claimed that it was singled out by the Canadian Dairy Commission for less favourable treatment than that received by other Canadian exporters were in connection with the January 1968 tender, the January 1969 sale, the wheat/skim milk powder deal, the Philippines incident, and the efforts in 1977 to explore business prospects with Peru, Mexico, Algeria, and Chile.

The primary instances where Schafer Bros. Ltd. felt that specific competitors received particularly favourable treatment from the Canadian Dairy Commission were the consortium sale in August 1968, the March 1969 tender, the tender in 1970, and the appointment of Ault Foods (1975) Ltd. in 1977.

The review of facts above in this Report pertaining to each of these specific allegations shows that the claims of David Schafer and George Schafer were, in fact, unfounded. Accordingly, there is no factual basis for the "questions" raised by Michel Choquette as to whether "fraud" or "deceit" on the part of the Canadian Dairy Commission, its officers or employees had occurred. Similarly, there was no evidence of any favoured treatment given to Ronald A. Chisholm Ltd. or to other competitors of Schafer Bros. Ltd.

Specifically with respect to export subsidies offered to Canadian exporters, and to the financial arrangements provided in connection with sales of Canadian Dairy Commission inventory to private exporters, the evidence is uniform and emphatic that the Canadian Dairy Commission made every effort to treat all traders equally. Apart from the fact that general notices regarding supplies, subsidies and financial arrangements went out publicly and generally to the trade, on the rare occasions when adjustments to the terms might be made for specific deals in order to respond to competitive pressures from abroad, all Canadian traders known to be interested in that particular business prospect were notified. This is not to say that on occasion the Canadian Dairy Commis-

sion did not make special arrangements to assist traders in performing on particular contracts, but Schafer Bros. Ltd. was the beneficiary of such treatment as much as were other Canadian exporters.

It might also be recalled, although it would not be an answer had the Canadian Dairy Commission in fact discriminated against Schafer Bros. Ltd., that Schafer Bros. Ltd. was not concerned about any question of principle regarding discrimination. Since at least 1969 Schafer Bros. Ltd. has sought to have the Canadian authorities grant, to it, exclusivity and preferential rights vis-à-vis other Canadian exporters with regard to sales of Canadian skim milk powder to CONASUPO.

One of the principal sets of factors that appear to underlie the conviction of the Schafers that they have been subjected to discriminatory treatment at the hands of the Canadian Dairy Commission, is the failure of the Canadian Dairy Commission to have developed an organized, clearly specified system for making sales of skim milk powder in export markets, such as is the case for many standardized, graded agriculture products. Uncertainties as to the size of available and future supplies, the absence of an organized futures market, and the like, may provide some measure of justification for the failure to develop a formalized system for handling export sales. At the same time, the adoption of an ad hoc method of selling skim milk powder abroad made it easy, if not inevitable, for an exporter who might be disadvantaged by the uncertainties inherent in such an undefined procedure to believe that his reverses were deliberately intended rather than the result of mischance. The Canadian Dairy Commission displayed little awareness of its own vulnerability in failing to develop a more objective and defensible sales procedure.

The conclusion that there was no purposive, personal, persisting or systematic discrimination against the Schafers does not mean that there might not have been unsystematic, temporary or incidental discrimination of one form or another. Indeed, two instances or types of instances of such appear from the evidence. These instances, although referred to below, have no material significance so far as the claim of Schafer Bros. Ltd. is concerned.

The first instance involves the answering by the Canadian Dairy Commission of inquiries from prospective foreign purchasers for the purchase of products. As was set out in connection with the last portion of Allegation B.8, there were two or three instances in the evidence involving the potential sale of skim milk powder to foreigners when the Canadian Dairy Commission replied stating that it would not make such a sale itself, and referred the prospective purchaser to two or three named Canadian exporters. On none of the occasions did the names given to the

prospective purchaser include that of Schafer Bros. Ltd. Although one can understand the practical reasons for this type of response to a general inquiry, it is obviously undesirable, and a bad practice, for the Canadian Dairy Commission to respond in such a manner. As indicated above, however, these particular instances were not demonstrated to have had any adverse effect whatever on the private exporters who were not referred to, or recommended, in the responses, of the Canadian Dairy Commission.

The other instance concerns the selection by the Canadian Dairy Commission of an agent in 1977 for use in connection with its sales to CONASUPO. Although the documentation prepared by the Canadian Dairy Commission in connection with the selection of Ault Foods (1975) Ltd. suggests that an objective and disinterested selection process in fact took place, yet from the evidence of Mr. Gilles Choquette at this Inquiry it was established that he had initially wished to see that the Granby Co-op was appointed as the Canadian Dairy Commission's agent:

[English Translation, Transcript p. 5060]

Q: Did you meet people of the Coopérative Agricole de Granby?

A: In March, at the end of March, I contacted the Co-opérative de Granby to ask them if they would be prepared to represent the Canadian Dairy Commission at CONASUPO. The reason for that was that I said to myself: if there is a profit in this operation, that Co-opérative represents twenty-five percent (25%) of Canadian milk. If there is a profit, it will return to the producer which means that if we change policy that our change of policy would be less questionable, seeing that if there was to be a profit it would return to the producer."

These views may also be questioned but, as indicated above, neither of the two examples was shown to have any material significance so far as the claim of Schafer Bros. Ltd. is concerned.

5. Unjust Enrichment

The law implies a debt or obligation that prevents a person from retaining a benefit derived from another where it is unjust or against conscience that he should not pay for it. This obligation of restitution, to prevent unjust enrichment, arises entirely outside and independently of the obligations or law of contract or tort. It does not depend upon an implied promise to pay, nor on any showing of bad faith. (See *Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbour Ltd.*, [1943] A.C. 32, and see *Deglman v. Guaranty Trust Co. of Canada et al*, [1954] S.C.R. 725, *County of Carleton v. City of Ottawa*, [1965] S.C.R. 663, and *Cie Immobilière Viger Ltée v. Lauréat Giguère Inc.*, [1977] 2 S.C.R. 67)

There is no closed list of categories or specific factual circumstances that the law requires be met before the enrichment, at the other person's expense, will be found to have been "unjust." The law imposes an obligation to pay wherever it is just and reasonable to do so, having regard to the relationship between the parties and the circumstances of the case. See *James More & Sons Ltd. v. University of Ottawa* (1974), 5 O.R. (2d) 162 (Morden, J.). Among the many types of circumstances that Canadian courts have considered in determining whether it is just and reasonable to impose an obligation to pay, are whether there was a windfall gain to the party who in fact obtained the benefit, whether the benefit was created at the claimant's expense, and whether that expense was reasonably incurred on the basis of some express or implied request, understanding, reliance, reasonable expectation or false sense of security that was induced by the party who in fact obtained the benefit.

In cases where an unjust enrichment is found to have occurred, the measure of damages is the fair value of the claimant's services and outlay, which in turn is measured by what the other person would have had to pay for them on a purely business basis (see *Deglman v. Guaranty Trust Co. of Canada et al*, *op. cit.* per Rand, J. at 729 and per Cartwright, J. at 735.)

In view of the findings of fact made in this Report, however, the legal principles of unjust enrichment do not support the granting of relief to Schafer Bros. Ltd. in this matter.

6. Criminal Code

Michel Choquette refers inferentially in his pre-Inquiry writings to certain criminal acts. For example, as quoted elsewhere, he writes at page 175 of his letter of July 25, 1977 to Gilles Choquette (Exhibit 6, Volume VI) in this way:

"In addition, if it were to be proven that certain officials of the Canadian Dairy Commission received illegal "kickbacks" for their preferential treatment of Messrs. Gonzalez and Chisholm, or even extended favoured treatment to these traders without receiving supplementary remuneration, then this secretive transfer of the Mexican market for Canadian skim milk powder to these favoured individuals would surely constitute legal grounds for prosecution.

"Furthermore, if, in spite of the Canadian Dairy Commission's "official" statements that by 1971 it had monopolized the Mexican market for skim milk powder and that consequently it was no longer giving export subsidies to private traders for sales of this commodity to Mexico, it could be shown

that the same favoured Canadian exporters or any other traders received subsidies for sales to CONASUPO which the Canadian Dairy Commission refused to extend to Schafer Bros., it is probable that a court of law would find the past senior officials of the Commission guilty of fraud.”

As a consequence, certain criminal law is reviewed even though, because of the findings of fact, it has no relevance in this matter.

The *Criminal Code of Canada* in Part III prescribes, in part, in respect of offences against the administration of law and justice, at Sections 107, 109, 110, 111, 113 and 114 as follows:

“107. In this Part

“evidence” means an assertion of fact, opinion, belief or knowledge whether material or not and whether admissible or not;

“government” means

- (a) the Government of Canada,
- (b) the government of a province, or
- (c) Her Majesty in right of Canada or in right of a province;

“judicial proceeding” means a proceeding

- (a) in or under the authority of a court of justice or before a grand jury,
- (b) before the Senate or House of Commons of Canada or a committee of the Senate or House of Commons, or before a legislative council, legislative assembly or house of assembly or a committee thereof that is authorized by law to administer an oath,
- (c) before a court, judge, justice, magistrate or coroner,
- (d) before an arbitrator or umpire, or a person or body of persons authorized by law to make an inquiry and take evidence therein under oath, or
- (e) before a tribunal by which a legal right or legal liability may be established,

whether or not the proceeding is invalid for want of jurisdiction or for any other reason;

“office” includes

- (a) an office or appointment under the government,
- (b) a civil or military commission, and
- (c) a position or employment in a public department;

“official” means a person who

- (a) holds an office, or
- (b) is appointed to discharge a public duty;

“witness” means a person who gives evidence orally under oath or by affidavit in a judicial

proceeding, whether or not he is competent to be a witness, and includes a child of tender years who gives evidence but does not give it under oath, because, in the opinion of the person presiding, the child does not understand the nature of an oath. 1953-54, c.51, s.99.

BRIBERY OF OFFICERS

109. Every one who

(a) being a justice, police commissioner, peace officer, public officer or officer of a juvenile court, or being employed in the administration of criminal law, corruptly

- (i) accepts or obtains,
- (ii) agrees to accept, or
- (iii) attempts to obtain,

for himself or any other person any money, valuable consideration, office, place or employment with intent

- (iv) to interfere with the administration of justice,
- (v) to procure or facilitate the commission of an offence, or
- (vi) to protect from detection or punishment a person who has committed or who intends to commit an offence, or

(b) gives or offers, corruptly, to a person mentioned in paragraph (a) any money, valuable consideration, office, place or employment with intent that the person should do anything mentioned in subparagraph (a) (iv), (v) or (vi),

is guilty of an indictable offence and is liable to imprisonment for fourteen years. 1953-54, c.51, s.101.

FRAUDS UPON THE GOVERNMENT — Contractor subscribing to election fund — Punishment

110. (1) Every one commits an offence who

(a) directly or indirectly

- (i) gives, offers, or agrees to give or offer to an official or to any member of his family, or to any one for the benefit of an official, or
- (ii) being an official, demands, accepts or offers or agrees to accept from any person for himself or another person,

a loan, reward, advantage, or benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with

- (iii) the transaction of business with or any matter of business relating to the government, or
- (iv) a claim against Her Majesty or any benefit that Her Majesty is authorized or is entitled to bestow,

whether or not, in fact, the official is able to cooperate, render assistance, exercise influence or do or omit to do what is proposed, as the case may be;

(b) having dealings of any kind with the government, pays a commission or reward to or confers an advantage or benefit of any kind upon an employee or official of the government with which he deals, or to any member of his family, or to any one for the benefit of the employee or official, with respect to those dealings, unless he has the consent in writing of the head of the branch of government with which he deals, the proof of which lies upon him;

(c) being an official or employee of the government, demands, accepts or offers or agrees to accept from a person who has dealings with the government a commission, reward, advantage or benefit of any kind directly or indirectly, by himself or through a member of his family or through any one for his benefit, unless he has the consent in writing of the head of the branch of government that employs him or of which he is an official, the proof of which lies upon him;

(d) having or pretending to have influence with the government or with a minister of the government or an official, demands, accepts or offers or agrees to accept for himself or another person a reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with

- (i) anything mentioned in subparagraph (a) (iii) or (iv), or
- (ii) the appointment of any person, including himself, to an office;

(e) offers, gives or agrees to offer or give to a minister of the government or an official a reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with

- (i) anything mentioned in subparagraph (a) (iii) or (iv), or
- (ii) the appointment of any person, including himself, to an office; or

(f) having made a tender to obtain a contract with the government

- (i) gives, offers or agrees to give to another person who has made a tender, or to a member of his family, or to another person for the benefit of that person, a reward, advantage or benefit of any kind as consideration for the withdrawal of the tender of that person, or
- (ii) demands, accepts or agrees to accept from another person who has made a tender a reward, advantage or benefit of any kind as consideration for the withdrawal of his tender.

(2) Every one commits an offence who, in order to obtain or retain a contract with the government, or as a term of any such contract, whether express or implied, directly or indirectly subscribes, gives, or agrees to subscribe or give, to any person any valuable consideration

(a) for the purpose of promoting the election of a candidate or a class or party of candidates to the Parliament of Canada or a legislature, or

(b) with intent to influence or affect in any way the result of an election conducted for the purpose of electing persons to serve in the Parliament of Canada or a legislature.

(3) Every one who commits an offence under this section is guilty of an indictable offence and is liable to imprisonment for five years. 1953-54, c.51, s.102.

BREACH OF TRUST BY A PUBLIC OFFICER

111. Every official who, in connection with the duties of his office, commits fraud or a breach of trust is guilty of an indictable offence and is liable to imprisonment for five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person. 1953-54, c.51, s.103.

SELLING OR PURCHASING OFFICE

113. Everyone who

(a) purports to sell or agrees to sell an appointment to or resignation from an office, or a consent to any such appointment or resignation, or receives, or agrees to receive a reward or profit from the purported sale thereof, or

(b) purports to purchase or gives a reward or profit for the purported purchase of any such appointment, resignation or consent, or agrees or promises to do so

is guilty of an indictable offence and is liable to imprisonment for five years. 1953-54, c.51, s.105.

INFLUENCING OR NEGOTIATING APPOINTMENTS OR DEALING IN OFFICES

114. Everyone who

(a) receives, agrees to receive, gives or procures to be given,

directly or indirectly, a reward, advantage or benefit of any kind as consideration for cooperation, assistance or exercise of influence to secure the appointment of any person to an office,

(b) solicits, recommends or negotiates in any manner with respect to an appointment to or resignation from an office, in expectation of a direct or indirect reward, advantage or benefit, or

(c) keeps, without lawful authority, the proof of which lies upon him, a place for transacting or negotiating any business relating to

- (i) the filing of vacancies in offices,
- (ii) the sale or purchase of offices, or
- (iii) appointments to or resignations from offices, is guilty of an indictable offence and is liable to imprisonment for five years. 1953-54, c.51, s.106."

These provisions have been in effect, in all material respects, since prior to 1966 (the first year to which this Inquiry related).

As already stated, nothing in the evidence adduced before this Inquiry proves or even constitutes any reasonable basis for suspecting that any of these provisions of the Criminal Code have been breached.

Further, quite aside from criminal law, none of the evidence suggested that any impropriety of any sort has occurred, as alleged by or for Schafer Bros. Ltd. It is most unfortunate, and unfair in the extreme, that the unfounded and biased suspicions of Schafer Bros. Ltd. received the publicity they did.

A few further words perhaps should be added.

Effective April 26, 1976, the Criminal Code of Canada also made it an offence in Canada to conspire to breach the laws of a foreign country. Section 423(2) and (3) of the Criminal Code provides as follows:

"423(2) Every one who conspires with any one

(a) to effect an unlawful purpose, or

(b) to effect a lawful purpose by unlawful means, is guilty of an indictable offence and is liable to imprisonment for two years.

(3) Every one who, while in Canada, conspires with any one to do anything referred to in subsection (1) or (2) in a place outside Canada that is an offence under the laws of that place shall be deemed to have conspired to do in Canada that thing."

This provision could only conceivably be relevant to this Inquiry with respect to Allegation B.5 and part of Allegation B.8, relating to the appointment of an agent by the Canadian Dairy Commission in 1977 for its sales to CONASUPO. As set out above, there was no evidence before this Inquiry that establishes that this section was breached.

(B) FAIRLY

1. *Illegal Acts*

(a) Procedural and Substantive Fairness

The concept of "fairness" has legal significance both in a procedural sense and, as touched upon earlier in this Chapter, in a substantive sense.

With respect to the procedural significance of the concept, it is clearly established in Canada that there is a common law duty on public officials to act fairly in making administrative or executive decisions. See, for example, *Nicholson v. Haldimand-Norfolk Regional Police Commissioners*, [1979] 1 S.C.R. 311, and *Martineau v. Matsqui Institution Disciplinary Board (No. 2)* (1979), 30 N.R. 119 (S.C.C.). As put by Lord Parker, C.J. in *Re H.K. (An Infant)*, [1967] 2 Q.B. 617 at 630:

"Good administration and an honest or bona fide decision must, as it seems to me, require not merely impartiality, nor merely bringing one's mind to bear on the problem, but acting fairly..."

As is the case with the concept of unjust enrichment, it is not constructive to limit the elasticity of the concept of fairness by seeking to identify any particular elements of it that must always be present. As stated by Lord Justice Lawton in *Maxwell v. Department of Trade and Industry*, [1974] Q.B. 523 at 539:

"Like defining an elephant, it is not easy to do, although fairness in practice has the elephantine quality of being easy to recognize."

To apply the concept requires a judgement call, taking all the facts into account.

The question of fairness is affected, for example, by the nature of the act that caused the alleged injury. General policy decisions and their implemen-

tation (such as the discontinuance of the export subsidy for sales to CONASUPO in 1971) are of a different character from conduct relating to one specific trader. A scholar recently put it this way:

"Why not deal with problems of fairness and natural justice simply on the basis that, the nearer one is to the type of function requiring straight law/fact determinations and resulting in serious consequences to individuals, the greater is the legitimacy of the demand for procedural protection but as one moves through the spectrum of decision-making functions to the broad, policy-oriented decisions exercised typically by a minister of the crown, the content of procedural fairness gradually disappears into nothingness, the emphasis being on a gradual disappearance not one punctuated by the unrealistic impression of clear cut divisions presented by the classification process?"

Mullan, "*Fairness: The New Natural Justice?*" (1975), 25 U.T.L.J. 280 at p. 300 (Cited with approval by Dickson, J. on behalf of the Supreme Court of Canada in *Minister of National Revenue v. Coopers and Lybrand* [1979] 1 S.C.R. 495 at 505).

However, the requirements of procedural justice, and recognition of the interests of persons affected to be heard in government decision-making processes, cannot be taken to the point of seriously impairing the efficiency of public administration.

The process utilized by the Canadian Dairy Commission in the spring of 1977 to select an agent for the CONASUPO business was fair in all the circumstances. Applications and submissions were invited and, according to the sworn testimony, were considered in an impartial and disinterested way.

The law of procedural fairness is applied to determine whether or not a particular decision should be upset and declared a nullity. It does not by itself result in the granting of other relief. The law relating to fairness in a substantive sense, on the other hand, can lead to equitable or other relief to injured parties.

Nothing can usefully be added here, with reference to fairness as a substantive concept, to what has been set out above in this Chapter and what will be referred to below regarding obligations arising from a high degree of market power such as that possessed by the Canadian Dairy Commission.

(b) Duties of a Monopolist-Monopsonist

In view of the substantial influence which the Canadian Dairy Commission has over both the buying and the selling of skim milk powder in Canada, and particularly with respect to export sales

during the years 1966 to 1977, it is relevant to a consideration of whether it acted lawfully and fairly to consider the general duties of a monopolist (seller) and a monopsonist (buyer).

Substantial degrees of market power that result from an Act of Parliament do not create legal problems under the monopoly provisions of the Combines Investigation Act, by virtue of a specific exception in that statute. It is nevertheless widely acknowledged that "most of the more enduring, and some of the more inflexible, monopolies are not found in the private sector, but under government protection and regulation" (L.A. Skeoch, *Dynamic Change and Accountability in a Canadian Market Economy* (1976), p. 145). The difficulty that concentrated market power poses for society is that it gives to a few people an unusual power to act so as to restrain or obstruct entry (by new producers, in the context of the dairy industry), or expansion (by existing producers), or the offering of alternatives in the medium or longer term. If the powers are used so as to interfere with change over the longer term and the achievement of longer run economies, it leads to what Dr. Skeoch has described as "the slow accumulation of economic maladjustments, difficult to detect and impossible to prove" (*ibid.*, p. 141).

The common law imposed duties upon public utilities, who typically occupy monopoly position, to serve everyone who requests service on a non-discriminatory basis as to access and price, and to provide reasonable service at a reasonable price. These duties reflect what I understand to be the fundamental duty of a monopolist, namely, that he must not act in such a way as to exclude others, without reasonable justification, from the subject matter under his control or power. In this regard, the views expressed by Stark, J. in *R. v. Electric Reduction Co. of Canada Ltd.* (1970), 61 C.P.R. 235 at 236-237 are apposite:

"... it must be clear to any businessman or business company which finds itself in a monopolistic situation that in that case especially strict standards of conduct are required and must be met by any such business, and they are not entitled to protect and preserve that monopolistic situation by unfair means..."

It is not surprising, in view of the virtual absence of clear and established practices of the Canadian Dairy Commission in the administration of its policies of supply and export subsidy, that a suspicious trader would be likely to ascribe unfair and exclusionary motives to any refusal to accommodate his business interests. This may have more to do with appearances and the avoidance of an unnecessary poisoning of relationships, but the strength of the policy justification for an act which is *prima facie* exclusionary bears directly upon the legal duty that attaches to the substantial degree of market power.

There is nothing in the evidence before this Inquiry which established that the Canadian Dairy Commission did any exclusionary acts that caused any damage to Schafer Bros. Ltd.

2. General Considerations not Importing Legal Liability

The Order-in-Council requires a determination as to whether the Canadian Dairy Commission, its officers and employees acted “lawfully and fairly” in their dealings with Schafer Bros. Ltd. The question is thereby raised as to whether there is some reasonably objective basis upon which it can be said that someone suffered unfairly as a result of a lawful act.

Schafer Bros. Ltd. claims to have been damaged by the Canadian Dairy Commission bidding directly to CONASUPO in 1968, proposing to bid in 1969, and subsequently, as of 1971, becoming the exclusive Canadian supplier of skim milk powder to CONASUPO. These acts were all clearly within the statutory powers of the Canadian Dairy Commission.

It will be recalled that both the trial judge and the Federal Court of Appeal in the *Manitoba Fisheries* case referred to above, found that on the facts of that case a lawful act had led to an unfair result. (As stated, the Supreme Court of Canada subsequently concluded that the refusal to compensate the plaintiff was unlawful on the facts of that case).

There is very little guidance on this matter. Two possible theoretical bases for such a conclusion occur to me. First, a loss of investment might result from a deliberate act which was not reasonably within the business risk that had been contemplated when an investment was made. This appears to have been so in the *Manitoba Fisheries* case. Second, despite non-discriminatory treatment, a loss might nevertheless be unique in character or magnitude to one or a few persons in a category of persons.

The first possible basis would seem to have no application to the facts before this Commission of

Inquiry. The private sector clearly had no right to expect that the Canadian Dairy Commission would not compete with it (on a non-exclusionary basis). As for its becoming the exclusive Canadian supplier of skim milk powder to CONASUPO, this was a result of a development in Mexican Government policy rather than of a choice of the Canadian Dairy Commission, and such policy changes must be taken to be one of the risks of dealing with a foreign government — just as customers change in any market.

As for the second possible basis referred to above, Michel Choquette stated as follows in his letter to Gilles Choquette dated July 25, 1977:

“...What happened to the Schafers did not happen to other Canadian exporters of milk powder. The Canadian Dairy Commission’s decision to take over the Mexican market for Canadian skim milk powder affected them alone in that there were no other Canadian traders who participated in the creation of this market.” (Exhibit 6, Vol. 6, p. 174)

The above statement is not consistent with the evidence. Several Canadian traders, including Eastern Townships Produce Ltd., Granby Co-op, Dominion Dry Milk Ltd., and Ronald A. Chisholm Ltd. had all expended time and effort during the 1960’s in an attempt to sell skim milk powder to Mexico. All the precise details of the investment of these other traders was not in evidence before this Commission, because they were irrelevant, but there is no reason to believe that these private traders had not made at least as significant a commitment of time and money as had Schafer Bros. Ltd. Indeed, with particular respect to the uniqueness of any loss, perhaps a considerably stronger case could be made for Ronald A. Chisholm Ltd. than can be made for Schafer Bros. Ltd. in that the substantial sales of Canadian skim milk powder to CONASUPO in 1969 and 1970 had been sales of powder supplied by Ronald A. Chisholm Ltd.

Accordingly, in the result there is no basis for concluding that what happened to Schafer Bros. Ltd. was unfair.

CHAPTER VIII

SUMMARY OF FINDINGS

(A) ALLEGATIONS AND ISSUES

The allegations made by Schafer Bros. Ltd. and enunciated by Michel Choquette are all set out in the Statement of Allegations (See Appendix 5 to this Report). Each allegation was fully and carefully assessed, and a determination made in respect to each allegation, in Chapter VI of this Report.

The evidence does not support any of the allegations. Accordingly it was not established that the Canadian Dairy Commission, or any of its officers or employees, acted unlawfully or unfairly in any of their dealings with Schafer Bros. Ltd. during the years 1966 to 1977.

Therefore, Schafer Bros. Ltd. did not suffer any losses as a result of any conduct of the Canadian Dairy Commission, its officers or employees, during the years 1966 to 1977, and the conclusion is that Schafer Bros. Ltd. is not entitled to any compensation.

The statement of the Issues Raised by the Allegations required that certain determinations be made in respect to the powers, policies, practices and controls exercised and employed by the Canadian Dairy Commission, in the event that any of the allegations were found to be true. Notwithstanding the above-stated determinations regarding the allegations, however, I have noted that the evidence reviewed in Chapter IV disclosed that the policies, practices and controls that were exercised and employed by the Canadian Dairy Commission, while not harming Schafer Bros. Ltd., did raise questions as to their consistency with the objects of the Canadian Dairy Commission as prescribed by Section 8 of the *Canadian Dairy Commission Act*, although they were within the powers of the Canadian Dairy Commission as conferred by Section 9 of the Act. Serious doubts were raised as to whether such policies, practices and controls were consistent with the objects of the Canadian Dairy Commission as prescribed by Section 8, as to whether they were necessary to achieve those objects, and also as to whether the powers of the Canadian Dairy Commission were exercised within the framework of any general policy or criteria adopted to achieve the objects of the Canadian Dairy Commission as prescribed by Section 8 of the Act.

(B) OTHER FINDINGS

Because certain persons were made particular targets for criticism in the allegations, in the evidence

and also in the submissions of and on behalf of Schafer Bros. Ltd. and Michel Choquette, and because by way of claims and innuendoes it was suggested that such persons had committed improper and perhaps even criminal acts, and in view of the total lack of any evidence to support such allegations, claims and innuendoes, special findings are now made in respect to the conduct and character of these persons.

1. **Dr. S.C. Barry** — Dr. Barry was the first Chairman of the Canadian Dairy Commission, holding office from December 2, 1966 until March 30, 1973, when he retired. Prior to assuming the chairmanship of the Canadian Dairy Commission, Dr. Barry had spent 41 years with the Federal Department of Agriculture, including the years 1960 to 1966 as Deputy Minister.

Dr. Barry was the principal target of the Schafers' accusations and suspicions and, judging from the submissions made in writing at the end of the Inquiry by counsel for Schafer Bros. Ltd., those suspicions remained throughout and at the end of the Inquiry. In David Schafer's view, Dr. Barry was personally responsible for the lack of cooperation with Schafer Bros. Ltd. on the part of the Canadian Dairy Commission. Dr. Barry was among those who were alleged to have engaged in "irregular behaviour". At the end of the Inquiry, counsel for Schafer Bros. Ltd. in his written submissions referred to Dr. Barry as "deceitful", "dishonest", as having a selective memory, as having been discriminatory and as having engaged in other exclusionary conduct.

Mr. G.R. McLaughlin stated of Dr. Barry in evidence that if one wanted to find a better Chairman for the Canadian Dairy Commission "I don't know where you would go to look" (Transcript p. 4608). This opinion was generally confirmed by Mr. Timothy Chisholm, who stated in evidence that Dr. Barry had always been very cooperative, and by Mr. P. Pariseault, who referred to Dr. Barry as a devoted man and surely one of the most honest men he had ever met (Transcript p. 3660).

My finding is that Dr. Barry was a competent, experienced and outstanding public servant, and there was not a tittle of support in the evidence for the attack upon his character or his integrity. While there is and was, of course, nothing wrong with questioning or criticizing any policies Dr. Barry formulated or judgements he made in the course of his public duties as Chairman of the Canadian Dairy Commission, it was highly improper,

without basis and most reprehensible for David Schafer, George Schafer, Michel Choquette and their counsel to make, without any evidence, the allegations and the comments that were made. Once the media publicize such irresponsible allegations, as was done in this case shortly prior to the commencement of the public hearings, it is difficult to erase any effect.

2. Mr. D.B. Goodwillie — Donald B. Goodwillie was the Director of Marketing for the Canadian Dairy Commission from 1967 until his death in October 1972. He had spent most of his career prior to 1967 in the Dairy Division of the Federal Department of Agriculture, and for some period of time had been Director of that Division as well as having marketing responsibilities for the Agricultural Stabilization Board.

Prior to this Inquiry being held, Michel Choquette had stated (Exhibit 6, Vol. 7, p. 27) that:

“In spite of their differences with the Canadian Dairy Commission, the Schafers always remained on good terms with Mr. Goodwillie. There was never any doubt in their minds that Mr. Barry, and not Mr. Goodwillie, was the real source of their problems with the Commission”

In evidence before this Inquiry, however, and without any supporting detail or documents, David Schafer stated that Mr. Goodwillie became uncooperative, and George Schafer asserted that Mr. Goodwillie was one of those who engaged in “irregular behaviour”.

My finding is that Mr. Goodwillie was a dedicated and competent public servant. There was no basis whatsoever in the evidence for any complaint or criticism that was made of him.

3. Mr. H.R. Tudor Price — Mr. Tudor Price became the Director, Marketing Intelligence, for the Canadian Dairy Commission in September 1975. Prior to joining the Canadian Dairy Commission, and following university training in the United Kingdom in Natural Sciences and Economics, he had worked in the private sector in the dairy business for eight years in the United Kingdom and for four years in Canada.

David Schafer stated in evidence that he did not trust Mr. Tudor Price. George Schafer's attitude seemed to be similar, although he did admit that Mr. Tudor Price had performed very effectively on behalf of Schafer

Bros. Ltd. at the meeting in the Philippines in January 1976.

My finding is that Mr. Tudor Price is, and always has been, a dedicated and competent public servant. The criticisms made of him by the Schafers are completely without foundation in the evidence.

4. Mr. L.J. Marcellus — Mr. Marcellus joined the Canadian Dairy Commission on April 1, 1968, as Assistant to Mr. Goodwillie in the Marketing Department. Mr. Marcellus became the Director of Marketing Operations for the Canadian Dairy Commission in October 1974.

Although George Schafer stated in evidence that Mr. Marcellus gave excellent cooperation regarding the Philippines endeavour, and although he said that he had no evidence that Mr. Marcellus intentionally provided the wrong lot numbers in early 1969 in connection with the 770 ton sale to CONASUPO, he nevertheless accused Mr. Marcellus of having engaged in “irregular behaviour” on the sole specific basis of his having provided lot numbers in early 1969 that were, in fact, wrong.

David Schafer stated in evidence that he had no specific complaints about Mr. Marcellus.

My finding, like the findings with respect to the other officials of the Canadian Dairy Commission referred to above, is that there is absolutely no basis in the evidence for any conclusion other than that Mr. Marcellus was a devoted and competent public servant.

5. Ronald A. Chisholm Ltd. — Ronald A. Chisholm Ltd. is a commodity merchant, founded in 1938, that trades domestically and internationally in food and industrial commodities. It has traded domestically in Canada in skim milk powder since the early 1950's, and has been engaged in the export of skim milk powder since approximately 1960. It is a large and experienced trader.

Mr. Timothy A. Chisholm, the President of Ronald A. Chisholm Ltd. and Mr. W. Pelley, a senior officer of the corporation, filed evidence statements, testified and were subject to cross-examination.

My finding is that no evidence whatsoever was adduced that suggested in any way that there was any “irregular behaviour” between officials of the Canadian Dairy Commission and Ronald A. Chisholm Ltd. as was alleged by Schafer Bros. Ltd. and Michel Choquette. Nor was there any evidence that Ronald A.

Chisholm Ltd. received any favoured treatment from the Canadian Dairy Commission. It was most unfair to this corporation that such allegations were made by Schafer Bros.

Ltd. and Michel Choquette, and I repeat the criticisms in this regard that I have stated above with respect to the allegations made against Dr. Barry.

CHAPTER IX

RECOMMENDATIONS

(A) COMPENSATION

Having examined all the facts and considered all the submissions, I have concluded that there is no basis upon which I can recommend that any compensation be paid to Schafer Bros. Ltd. I therefore recommend that compensation not be paid.

In making this recommendation, not only is there no basis in law for recommending that any compensation be paid, there also was no evidence of unfair conduct towards Schafer Bros. Ltd. by the Canadian Dairy Commission, its officers or employees during the years 1966 to 1977 that could reasonably found a recommendation that compensation be paid to Schafer Bros. Ltd. Nor did anything unfair, unjust, unreasonable or unique happen to Schafer Bros. Ltd. arising, consequentially or otherwise, out of any act or omission of the Canadian Dairy Commission, its officers or employees, that could support an award of compensation to Schafer Bros. Ltd. on any compassionate or "grace and favour" basis.

Further in making this recommendation, it merits reiteration that the principal claim by Schafer Bros. Ltd. for compensation was based upon two facts, both of which turned out to be unfounded, namely, that Schafer Bros. Ltd. played a unique role in developing the Mexican market for Canadian skim milk powder and that the Canadian Dairy Commission deliberately misappropriated that market. It also merits reiteration that the main element in the calculation of the quantum of the principal claim for compensation was founded upon a theory of exclusionary trading rights, subscribed to by David Schafer and George Schafer, that is anachronistic and antithetical to Canadian public policy.

(B) ASPECTS OF ACCOUNTABILITY

1. *Policies and Practices*

(a) **Production Policy**

The need for a dairy products marketing board in Canada such as the Canadian Dairy Commission is indisputable. This is not to suggest, however, that a comprehensive supply management program need be adopted. Certain of the present policies of the Canadian Dairy Commission should be changed. The consequences of a continuation of the present policies of the Commission, for the producer, are almost certainly a drastic increase in the absolute cost barrier

and capital requirements barrier both to entry by new producers and to opportunities for established producers to expand output, which would carry with it a concentration of ownership and a movement towards vertical integration in the production and processing sectors of the dairy industry. By parity of reasoning, the burden on the consumer and the taxpayer, both in terms of cost and scarcity of product, will show a parallel escalation.

The concepts of "fair return", efficient producers" and "adequate supply", all embodied in Section 8 of the Canadian Dairy Commission Act are, however, complex, particularly in their longer run dimensions. They are normally best brought into a mutual accommodation by an effective market economy. Therefore, because well-known climatic problems and economic characteristics of the dairy products market require that some element of support and direction for producers should be undertaken by Government, one would have thought that the forms of support and direction adopted by the Canadian Dairy Commission as authorized by Government should promote rather than inhibit broad adjustments to market changes and should assist in maintaining efficiency and flexibility in the milk production program.

Serious questions have been raised by the evidence given at this Inquiry about the policies adopted by the Canadian Dairy Commission, in view of the objects of the Commission as set out in Section 8 of the *Canadian Dairy Commission Act*. The evidence points to a seemingly superficial way in which the central concepts of Section 8 are understood or interpreted by the Canadian Dairy Commission, and to an apparent lack of sophisticated or consistent rationale for that understanding or interpretation. Its views of its statutory responsibilities are very short run and almost ad hoc in their orientation. The apparent absence of any underlying long run rationale appears to apply equally to the price support system, the market-sharing quota system and the cost-justification approach to pricing. The apparent complete faith of the Canadian Dairy Commission in comprehensive supply management schemes is reflected in its apparent lack of awareness of or concern for the hidden costs of such schemes. This is important, not only because of the hundreds of millions of dollars of public funds directly absorbed on an annual basis, but also because of the substantial hidden cost of these systems as referred to in the evidence. The costs are borne by consumers, by the taxpayers, and also, over the long run, by the producers themselves.

The overwhelming advantage of the market is that it provides signals in the form of increases or decreases in prices to consumers and producers which provide the basis for changes in investment and in consumption patterns which in turn will promote both consumer welfare and producer advantages over the long run.

In order to obtain the basic advantages of the market processes, however, there must be relative ease of entry by new producers and an opportunity for established producers to expand output in response to price increases. The policies adopted should facilitate change and promote efficiency over the long run, rather than obstruct change, limit supply and enhance costs.

The policies that have been pursued by the Canadian Dairy Commission have tended to enhance barriers to entry by new producers and to make difficult the expansion of output by existing producers. The barriers to entry and expansion have been substantially raised by the high price and scarcity of milk quotas. When the increased cost of quota is incorporated into the price of milk by becoming embedded in the artificial cost-justification formula adopted by the Canadian Dairy Commission, the price to consumers is raised significantly and unwarranted windfall profits are created in the hands of the first generation of quota holders.

Perhaps because of the sophisticated and long run nature of several of the policy questions, and partly because of the effectiveness and organization of the producer and processor groups, the interests of the consumer do not appear to have been a substantial concern of the Canadian Dairy Commission. This is reflected in part by the Canadian Dairy Commission's simplistic understanding of the concept of "adequate supply" contained in Section 8 of the *Canadian Dairy Commission Act*, and also in its apparent lack of understanding of, or concern for, the barriers to entry and expansion that result from the quota system and from the "cost" components of the Returns Adjustment Formula.

In fact, it appears probable that the pricing system used by the Canadian Dairy Commission does not even benefit producers, except in the short term, and except for those producers who possessed quota when the prices were raised.

The issues and evidence which were the concern of this Inquiry do not provide a sufficient basis for suggesting detailed policies for adoption by the Canadian Dairy Commission. One thing does appear very clearly, however, and that is that the Canadian Dairy Commission should be required from time to time to give a full accounting of its policies, their justification and their effects, to someone who is independent of both the Canadian Dairy Commission and the principal interest groups. It is difficult to believe that processes of accountability for policy have been very vigorous in the past, otherwise some of the evidence on the policy questions that was given before this Inquiry would surely have been different.

Even although it is not possible in this Report to suggest detailed policies for the Canadian Dairy Commission, some general policy directions based on

the evidence can nevertheless be suggested to better implement the objects set out in Section 8, if that section is to have any long run significance:

1. It is vital to distinguish two broad objectives of public policy in relation to agriculture. First, there is the management of agricultural resources. The only reliable basis for efficient allocation of resources is the market price mechanism, although it must be adapted to the particular needs of agriculture. Producers must have some reasonable assurance of price levels in advance so they can make rational output and investment decisions. If the quota system were to be gradually phased out, a possible alternative that would appear to involve less harm to the public than results from the quota system would be a system of forward target prices supplemented by subsidies. Second, there is the income objective which almost certainly would require subsidies, a condition applying to many sectors of the economy. Such subsidies must be divorced from the volume of output and be based upon either the farm unit or, alternatively, be limited to a maximum payment per producer.
2. Processors should rely upon the open market system for assurance of supply. This would be phased in as the quota system is phased out.
3. The elimination of the quota system would go a long way towards the reduction of a large barrier to entry and to expansion, and would be of direct benefit to consumers by permitting better responses to market signals. In terms of Section 8 of the Act, the objective of adequate supplies would be more fully achieved if the quota system were eliminated. In all likelihood the prices would also be more favourable than those currently paid by the consumer, particularly in his double capacity of consumer plus taxpayer.

As for the institutional mechanisms by means of which the Canadian Dairy Commission might be held accountable for the policies it adopts and administers, there is no reason to believe that the existing mechanisms within Parliament, within the Department of Agriculture and within other supervisory bodies in government cannot adequately perform the task. There are sophisticated economic questions involved, to be sure, but there are also important social and political questions that require a broad perspective and, in many cases, political judgement.

The existing institutions for control and supervision of the Canadian Dairy Commission are perfectly able to safeguard the public and consumer interests against the organized influences exerted on behalf of the producers and processors. The existing institutions can also obtain access to whatever expert advisors or analytic skills that may be thought advisable or necessary in order to secure a full and proper accounting for policies from the Canadian Dairy Commission. What is required is a more formal organization of the process of appraisal by those institutions, so that a penetrating and profound evaluation will be carried out. The public interest requires that this be done.

As to this, it should be noted that while the economic and social implications of the issues that arise in Canadian federal dairy policy are of substantial significance to the public, it is unfortunate that many of these policy questions are difficult to define to persons who are not familiar with the dairy industry and therefore the media have been unable to deal with them effectively. As a consequence, this fact alone places an even greater burden upon the other existing institutions for evaluation and control.

(b) Export Marketing

Although there may be something to be said for a highly flexible export marketing policy that permits all major decisions by the Canadian Dairy Commission to be made in accordance with competitive market pressures as they are perceived by the Chairman or by the Commission from time to time, the benefits appear to be more theoretical than real. Furthermore, and more importantly, too great a price must be paid for this flexibility. That price results from having a system that is wide open to abuse, with no effective way to detect or police against acts of personal discrimination or acts of personal favouritism. Members of the public, including private exporters, are entitled to reasonable assurance that there is no abuse or incompetence, or even the appearance of such, that may be injurious or appear to be injurious to particular private traders. Not surprisingly, some traders, as was the case here with Schafer Bros. Ltd., will readily suspect some form of abuse or incompetence whenever they suffer or believe they have suffered from a purely discretionary act done by the Commission or by one of its officers or employees.

There is also a real risk that at least in some degree "flexibility" will amount to little more than an unrelated, perhaps inconsistent, series of ill-considered, ad hoc decisions made without reference to, or sense for, longer term direction or policies.

This Inquiry probably would not have been necessary had the Canadian Dairy Commission acted in accordance with published practices and procedures and on the basis of information that was readily

known or available to the public. A system administered in such a way would leave little room for suspicion and distrust. It would, further, assist private exporters to function effectively. Guidelines and practices should be adopted by the Canadian Dairy Commission in the disposal of Canadian skim milk powder surpluses.

In view of the fact that the Canadian Dairy Commission has such a substantial degree of market power, there is almost no limit to the potential for marketing errors, through incompetence and otherwise, and for ill-advised governmental interference for which there is practically no mechanism for accountability by the Canadian Dairy Commission to producers and consumers, who are the persons whose interests Parliament required it to serve. As a consequence, it is essential that producers and consumers have some way by which to assess the marketing performance of the Canadian Dairy Commission.

As a start, and directed to that purpose, the following guidelines and practices should be adopted by the Canadian Dairy Commission:

1. The Canadian Dairy Commission ought not engage in any exclusionary acts with respect to pricing or supplies to any private Canadian trader. For example, it ought not take advantage of the public purse to bid at a price below that which the available export subsidy would permit a private trader to offer in competition. Likewise, it ought not refuse supplies to any trader who is prepared to meet the Canadian Dairy Commission's published terms of sale when there are stocks available. The mere fact that the Canadian Dairy Commission might also wish to bid on the same business prospect is not a good reason to refuse to make the supplies available to the private trader in the event that he should be the successful bidder.
2. Even in the case of countries or other foreign purchasers who insist on dealing directly with the Canadian Dairy Commission as a government agency for all or most of its purchases, there would seem to be no reason why the current general export subsidy could not be available with respect to any sales that might possibly be made to such purchasers notwithstanding such general policy of such governments. It may be that no private trader will succeed in making any sales to such purchasers, but at the very least it would avoid any suggestion that it is the Canadian Dairy Commission who is responsible for excluding the private

trade. Also, to the extent that, or whenever, such foreign government or other purchaser relaxes its preferences for being supplied by the Canadian Dairy Commission, the private sector will be in a position immediately to seek the business.

3. The generally applicable export subsidy level or levels should be fixed and communicated publicly in advance in order that any private trader may readily be advised of them. This will mean that general subsidy levels would have to be announced from time to time. If and when special changes might be considered desirable for a particular situation and are offered to a particular trader, such changes as are offered to such trader should be offered to any other trader who inquires regarding the subsidy for the same business prospect. Further, information regarding any offers of subsidy and all subsidies granted, which differ from the generally applicable level, should be made available to the public after the transaction to which they pertain has closed. The information should include the pertinent details of the transaction and the identity of the recipient. The same would apply equally to all other financial terms of export sales.
4. As a general rule, all Canadian Dairy Commission information that would assist private traders should be publicly available on a timely basis, except, of course, for information received in confidence. For example, inventory records showing amounts, specifications and location should be kept current and publicly available. Enquiries from possible purchasers should also be publicly available together with any reply that might have been made by the Canadian Dairy Commission to such enquiries.

(c) Openness in Policy Formation

According to the evidence, in 1975 the Federal Government established, with the assistance of the Canadian Dairy Commission, a long-term Dairy Policy. The Returns Adjustment Formula, for example, was adopted pursuant to that policy. Mr. Cloutier testified that in 1980 a general assessment of the Policy was being undertaken to measure its impact and to consider any need for modifications.

It is self-evident that overall policy-making for an industry as important as the dairy industry is to

Canada should be as open a process as possible. Many groups of persons, including producers, processors, consumers and taxpayers, have a direct interest in both the short term and long term implications of such policies. Openness is an important adjunct of accountability.

2. Questions and Complaints

It is now apparent that one of the reasons why this Commission of Inquiry was necessary was the appearance to Schafer Bros. Ltd. and Michel Choquette that no body that was demonstrably independent of the Canadian Dairy Commission conducted a thorough investigation of the complaints of Schafer Bros. Ltd. and listened fully to both sides.

For this and other reasons, some independent body should be available to receive bona fide complaints made against the Canadian Dairy Commission, its officers or employees, whether those complaints are made by producers, processors, consumers, private traders or any other member of the public. It may be that there is in existence an independent body that could perform this function. In any event, complaints should be assessed in some orderly and generally accepted manner, independently of the Canadian Dairy Commission and its Consultative Committee. If such is done, the probable result will be that there will be a meaningful resolution of all bona fide complaints.

In recommending this, it should be emphasized that it is not being suggested that an ombudsman be appointed or that the role of a Member of Parliament be abridged. Instead, what is recommended is only that there should be some method or a known and recognizable forum available to deal with bona fide complaints so that any damage to third parties can be expeditiously and in a satisfactory manner alleviated or prevented.

(C) COSTS

It is recommended that consideration be given to the payment of certain costs which are of two categories, namely:

1. On the basis that the documentation prepared by Michel Choquette was useful to the Commission of Inquiry, and that the Canadian Dairy Commission was in part responsible for this Inquiry having been necessary, and on the basis that the Inquiry may have served a purpose over and above that of determining the validity of the complaints and allegations of Schafer Bros. Ltd. — that a payment be made to Schafer Bros. Ltd. in respect to the disbursement cost of preparing and assembling the documentation, including certain related out-of-pocket expenses, in the total amount of \$20,000.

2. On the basis that it was reasonable that (a) Messrs. Tudor Price, Marcellus, Ronald A. Chisholm Ltd. and Ault Foods (1975) Ltd. be separately represented by counsel in view of the nature of the allegations, and contrary to the submission of counsel for the Canadian Dairy Commission that separate representation by counsel for Messrs. Tudor Price and Marcellus was not necessary in view of their presence as counsel for the Canadian Dairy Commission at the Inquiry, and also that (b) Schafer Bros. Ltd. be represented by counsel — that one counsel fee be paid to each of Schafer Bros. Ltd. (in respect to the counsel services of Mr. Lande), Mr. Tudor

Price (in respect to the counsel services of Mr. Newcombe), Mr. Marcellus (in respect to the counsel services of Mr. Grant), Ronald A. Chisholm Ltd. (in respect to the counsel services of either Mr. Chisholm or Mr. Cooper) and Ault Foods (1975) Ltd. (in respect to the counsel services of Mr. Chadwick), such counsel fee being only for each day of attendance by counsel as named above at the oral hearings of the Commission, on a per-diem basis not to exceed the counsel fee that probably would be awarded for such an item in a bill of costs in a Federal Court of Canada party and party bill of costs taxation, taxed on a solicitor-client basis.

APPENDICES

1. Orders-in-Council P.C. 1979-1586; P.C. 1979-1649; P.C. 1979-1653
2. Notice of Establishment of the Inquiry, and Press Release
3. Canadian Dairy Commission Act
4. Rules of Practice and Procedure of the Inquiry
5. Statement of Allegations
6. The Issues Raised by the Allegations
7. Commission of Inquiry Mailing List
8. Appearances
9. List of Witnesses
10. List of Exhibits
11. Topical Consideration of the Evidence
12. "An Outline of Some of the Economic Aspects of the Inquiry", prepared for the Commission of Inquiry by Dr. L.A. Skeoch
13. "The Evolution of Organization and Regulation in the Ontario and Canadian Dairy Industries", prepared for the Commission of Inquiry by Mr. George R. McLaughlin, with selected schedules.
14. Memorandum, prepared by Mr. P. Pariseault
15. "Review of the Canadian Dairy Commission, Background, Creation, Policy and Operations", prepared for the Commission of Inquiry by Dr. G.A. Hiscocks and Mr. L. Stephens
16. Evidence Statement of Michel Choquette.

APPENDIX 1

P.C. 1979-1586

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 25 May, 1979.

CANADA PRIVY COUNCIL

WHEREAS the Committee of the Privy Council has had before it a report by the Prime Minister concerning certain allegations made by Schafer Bros. Ltd. and Mr. Michel Choquette in respect of dealings of the Canadian Dairy Commission, its officers and employees with Schafer Bros. Ltd., Montreal, Quebec during the years 1966 to 1977 relating to the export from Canada of skim milk powder;

AND WHEREAS the Committee is of the opinion that it would be in the public interest for the said allegations to be investigated;

The Committee, therefore, on the recommendation of the Prime Minister, advise that the Honourable Mr. Justice Hugh F. Gibson of the City of Ottawa, Province of Ontario, be appointed a Commissioner under Part I of the Inquiries Act to inquire into certain allegations made by Schafer Bros. Ltd. and Mr. Michel Choquette in respect of dealings of the Canadian Dairy Commission, its officers and employees with Schafer Bros. Ltd., Montreal, Quebec during the years 1966 to 1977 in respect of the export from Canada of skim milk powder, and

- (a) to define the issues raised by the said allegations;
- (b) premised on the said issues, to determine all relevant facts concerning the actions of the Canadian Dairy Commission, its officers and employees in their dealings with Schafer Bros. Ltd. during the years 1966 to 1977 relative to the export from Canada of skim milk powder;
- (c) to ascertain whether the Canadian Dairy Commission, its officers and employees have acted lawfully and fairly in their dealings with Schafer Bros. Ltd.; and
- (d) to report to the Governor in Council with regard to the matters investigated under paragraphs (a), (b) and (c) and to include in the report
 - (i) a recommendation as to whether any compensation should be paid to Schafer Bros. Ltd. and, if so, the basis on which such compensation should be determined, and
 - (ii) such other recommendations as the Commissioner may deem appropriate.

The Committee further advise

1. that the Commissioner be authorized to adopt such procedures and methods as he may from time to time deem expedient for the proper conduct of his duties;

2. that the Commissioner be authorized to engage the services of such counsel, staff, clerks and technical advisers as he may require at rates of remuneration and reimbursement to be approved by the Treasury Board;
3. that the officers and employees of departments and agencies of the Government of Canada render such assistance to the Commissioner as may be required for his activities;
4. that the Commissioner be authorized to sit at such times and at such places as he may decide from time to time;
5. that the Commissioner be authorized to exercise all the powers conferred by section 11 of the Inquiries Act; and
6. that the Commissioner be directed to report to the Governor in Council with all reasonable dispatch and file with the Privy Council Office his papers and records as soon as reasonable may be after conclusion of the inquiry.

CERTIFIED TO BE A TRUE COPY
COPIE CERTIFIÉE CONFORME

"P.M. PITFIELD"

CLERK OF THE PRIVY COUNCIL
LE GREFFIER DU CONSEIL PRIVÉ

P.C. 1979-1649
13 June 1979

CANADA PRIVY COUNCIL — CONSEIL PRIVÉ

HIS EXCELLENCY THE GOVERNOR GENERAL
IN COUNCIL, on the recommendation of the Prime Minister, is pleased hereby,

- (a) pursuant to paragraph (b) of the definition "department" in section 2 of the Financial Administration Act, to designate the Commission of Inquiry into Certain Allegations Concerning Commercial Practices of the Canadian Dairy Commission as a department for the purposes of the Financial Administration Act; and
- (b) pursuant to paragraph (b) of the definition "appropriate Minister" in section 2 of the Financial Administration Act, to designate the Prime Minister as the appropriate Minister with respect to the Commission of Inquiry into Certain Allegations Concerning Commercial Practices of the Canadian Dairy Commission.

CERTIFIED TO BE A TRUE COPY
COPIE CERTIFIÉE CONFORME

"MARCEL MASSÉ"

CLERK OF THE PRIVY COUNCIL
LE GREFFIER DU CONSEIL PRIVÉ

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 13 June, 1979

The Committee of the Privy Council, on the recommendation of the Prime Minister, advise that the Honourable Hugh F. Gibson appointed Commissioner under Order in Council P.C. 1979-1586 of 25th May, 1979, to inquire into certain allegations in respect of dealings of the Canadian Dairy Commission be known as the Commission of Inquiry into Certain Allegations Concerning Commercial Practices of the Canadian Dairy Commission.

CERTIFIED TO BE A TRUE COPY
COPIE CERTIFIÉE CONFORME

“MARCEL MASSÉ”

CLERK OF THE PRIVY COUNCIL
LE GREFFIER DU CONSEIL PRIVÉ

APPENDIX 2 CANADA

COMMISSION OF INQUIRY INTO CERTAIN ALLEGATIONS CONCERNING COMMERCIAL PRACTICES OF THE CANADIAN DAIRY COMMISSION

TAKE NOTICE that by Orders in Council P.C. 1979-1586 dated 25 May 1979, and P.C. 1979-1653 dated 13 June 1979, the Committee of the Privy Council appointed the Honourable Mr. Justice Hugh F. Gibson a Commissioner under Part I of the Inquiries Act to inquire into certain allegations in respect of dealings of the Canadian Dairy Commission with Schafer Bros. Ltd. during 1966 to 1977, such Commission to be known as the “Commission of Inquiry into Certain Allegations Concerning Commercial Practices of the Canadian Dairy Commission”.

1. The office for the Commission has been opened at 171 Slater Street, Vanguard Building, Ottawa, Ontario.
2. The Inquiry will be conducted in the following manner:
 - a) Rules of Practice and Procedure of the orderly conduct of the Inquiry have been adopted. Copies are available at the office of the Commission free of charge on request.
 - b) The Rules of Practice and Procedure ensure to all interested persons the opportunity to know the nature of the evidence that will be adduced before the Commissioner at any Public Hearing of the Commission.
 - c) Documents pertaining to the allegations that have been made, and the issues, will be deposited at the Commission's office and will be available there for public inspection.

d) All persons who wish to give evidence are required to file at the Commission's office, in advance of giving such evidence, a full written statement of the evidence which they propose to adduce. Persons who wish general guidance in the preparation of such statements may request assistance from Commission staff.

e) All statements of evidence so filed will be available for public inspection at the Commission's office in advance of any Public Hearing at which such evidence will be introduced before the Commissioner.

3. A public Organizational Hearing to determine general matters affecting the conduct of the Inquiry will take place at the Conference room located at the 20th floor, l'Esplanade Laurier, West Tower, 300 Laurier Street West, Ottawa, Ontario commencing Friday, November 23rd, 1979 at 10:30 A.M.
4. Subsequent Public Hearings to receive evidence will take place from time to time and notice of the date and place of each such Hearing will be given to those persons who advise the Registrar that they wish to receive such notices.

All inquiries and communications with the Commission or Commissioner should be made to the Registrar, viz:

Marcel A.J. Dompierre, Esq.
Registrar
Commission of Inquiry into
Certain Allegations Concerning
Commercial Practices of the
Canadian Dairy Commission

**MAILING ADDRESS: P.O. Box 1268, Station “B”,
Ottawa, Ont.
K1P 5R3
tel.: (613) 995-9568**

PRESS RELEASE

COMMISSION OF INQUIRY INTO CERTAIN ALLEGATIONS CONCERNING COMMERCIAL PRACTICES OF THE CANADIAN DAIRY COMMISSION

COMMISSION OF INQUIRY TO BEGIN PUBLIC HEARINGS

OTTAWA, November 6, 1979 — The Commission of Inquiry into Certain Allegations Concerning Commercial Practices of the Canadian Dairy Commission has announced the commencement of public hearings.

The Commission was set up in late May under the Honourable Mr. Justice Hugh F. Gibson to inquire into allegations in respect of dealings of the Canadian Dairy Commission during 1966-1977 with Schafer Bros. Ltd., a Montreal firm.

Copies of the rules of practice and procedure of the inquiry are available from the Commission's office. All documents pertaining to the allegations that have been made, including statements of proposed evidence filed as the inquiry proceeds, will also be available for public inspection at the Commission's office at 171 Slater St., Ottawa.

Persons who wish to give evidence are required to file a written statement of their proposed evidence with the Commission's office in Ottawa. Persons preparing such statements can receive general guidance from the Commission staff.

A public organizational hearing to deal with general matters affecting the conduct of the inquiry will be held in the

conference room, 20th Floor, West Tower, L'Esplanade Laurier, 300 Laurier St. W., Ottawa, on November 23, 1979, commencing at 10:30 a.m.

Anyone wishing to receive notice of subsequent public hearings at which evidence will be received should contact the Registrar of the Commission. The Commission's mailing address is Box 1268, Station B, Ottawa, Ontario, K1P 5R3. Telephone 613-995-9568.

APPENDIX 3

REVISED STATUTES OF CANADA

CHAPTER C-7

An Act to provide for the establishment of a dairy commission for Canada

SHORT TITLE

Short title

1. This Act may be cited as the *Canadian Dairy Commission Act*. 1966-67, c. 34, s. 1.

INTERPRETATION

Definitions

“Commission”
«Commission»

“dairy product”
«produit laitier»

“market”
«commercialiser»

“milk”,
“cream”
«lait»

“Minister”
«Ministre»

“place”
«lieu»

“regulated product”
«produit réglementé»

2. In this Act

“Commission” means the Canadian Dairy Commission established by this Act;

“dairy product” means milk, cream, butter, cheese, condensed milk, evaporated milk, milk powder, dry milk, ice-cream, malted milk, sherbet, or any other product manufactured wholly or mainly from milk;

“market” means to market in interprovincial or export trade;

“milk” means milk from cows and “cream” means cream derived from such milk;

“Minister” means the Minister of Agriculture;

“place” includes any vehicle, vessel, railway car or aircraft;

“regulated product” means a dairy product the marketing of which is regulated or prohibited by regulations made under this Act. 1966-67, c. 34, s. 2.

CANADIAN DAIRY COMMISSION

Commission established

3. (1) There shall be a corporation to be known as the Canadian Dairy Commission consisting of three members appointed by the Governor in Council to hold office during pleasure.

CHAPITRE C-7

Loi prévoyant la création d'une Commission canadienne du lait

TITRE ABRÉGÉ

1. La présente loi peut être citée sous le titre: *Loi sur la Commission canadienne du lait*. 1966-67, c. 34, art. 1. Titre abrégé

INTERPRÉTATION

2. Dans la présente loi

«commercialiser» signifie commercialiser sur le marché interprovincial ou sur le marché d'exportation;

«Commission» désigne la Commission canadienne du lait établie par la présente loi;

«lait» désigne le lait de vache et «crème» désigne la crème obtenue de ce lait;

«lieu» comprend tout véhicule, navire, wagon ou aéronef;

«Ministre» désigne le ministre de l'Agriculture;

«produit laitier» désigne le lait, la crème, le beurre, le fromage, le lait condensé, le lait évaporé, la poudre de lait, le lait sec, la crème glacée, la farine lactée, le sorbet ou tout autre produit entièrement ou principalement à base de lait;

«produit réglementé» désigne un produit laitier dont la commercialisation est réglementée ou interdite par des règlements établis aux termes de la présente loi. 1966-67, c. 34, art. 2.

Définitions

«commercialiser»
“market”

«Commission»
“Commission”

«lait» «crème»
“milk”

«lieu»
“place”

«Ministre»
“Minister”

«produit laitier»
“dairy...”

«produit réglementé»
“regulated...”

COMMISSION CANADIENNE DU LAIT

3. (1) Est établie une corporation appelée Commission canadienne du lait formée de trois membres nommés par le gouverneur en conseil, qui occuperont leur poste à titre amovible.

Création de la Commission

Chairman and Vice-Chairman	(2) The Governor in Council shall designate one of the members to be Chairman of the Commission and one of the members to be Vice-Chairman of the Commission.	(2) Le gouverneur en conseil désigne l'un des membres pour occuper le poste de président et un autre pour occuper celui de vice-président de la Commission.	Président et vice-président
Chief executive officer	(3) The Chairman is the chief executive officer of the Commission.	(3) Le président est le fonctionnaire administratif en chef de la Commission.	Fonctionnaire administratif en chef
Remuneration and expenses	(4) Each member of the Commission may be paid such salary or other remuneration as is fixed by the Governor in Council, and may be paid such travelling and living expenses incurred by him in connection with the performance of his duties as are fixed by the Governor in Council.	(4) Chaque membre de la Commission peut recevoir le traitement ou autre rémunération que fixe le gouverneur en conseil ainsi que les frais de voyage et de subsistance encourus par lui dans l'exercice de ses fonctions, tels qu'ils sont fixés par le gouverneur en conseil.	Rémunération et frais
Retirement age	(5) A member ceases to hold office upon reaching the age of seventy years.	(5) Un membre cesse d'occuper son poste dès qu'il atteint soixante-dix ans.	Âge de retraite
Temporary substitute member	(6) If any member of the Commission is absent or unable to act, the Governor in Council may appoint a temporary substitute member for such term and upon such conditions as the Governor in Council prescribes.	(6) Si quelque membre de la Commission est absent ou s'il est dans l'impossibilité d'agir, le gouverneur en conseil peut nommer, pour la durée et aux conditions qu'il prescrit, un remplaçant provisoire.	Remplaçants provisoires
Head office	(7) The head office of the Commission shall be in the city of Ottawa, but meetings of the Commission may be held at such other places as the Commission may decide. 1966-67, c. 34, s. 3.	(7) Le siège social de la Commission est établi en la ville d'Ottawa, mais les réunions de la Commission peuvent se tenir en tels autres lieux que la Commission peut décider. 1966-67, c. 34, art. 3.	Siège social
Agent of Her Majesty	4. (1) The Commission is for all purposes of this Act an agent of Her Majesty, and its powers under this Act may be exercised by it only as such agent.	4. (1) A toutes les fins de la présente loi, la Commission est mandataire de Sa Majesté et n'exerce qu'à ce titre les pouvoirs que lui confère la présente loi.	Mandataire de Sa Majesté
Contracts	(2) The Commission may, on behalf of Her Majesty, enter into contracts in the name of Her Majesty or in the name of the Commission.	(2) La Commission peut, pour le compte de Sa Majesté, conclure des contrats au nom de Sa Majesté ou au nom de la Commission.	Contrats
Property	(3) Property acquired by the Commission is the property of Her Majesty and title thereto may be vested in the name of Her Majesty or in the name of the Commission.	(3) Les biens acquis par la Commission sont dévolus à Sa Majesté et les titres à ces biens peuvent être établis au nom de Sa Majesté ou au nom de la Commission.	Biens
Actions	(4) Actions, suits or other legal proceedings in respect of any right or obligation acquired or incurred by the Commission on behalf of Her Majesty, whether in its name or in the name of Her Majesty, may be brought or taken by or against the Commission in the name of the Commission in any court that would have jurisdiction if the Commission were not an agent of Her Majesty. 1966-67, c. 34, s. 4.	(4) Des actions, poursuites ou autres procédures judiciaires concernant un droit acquis ou une obligation contractée par la Commission pour le compte de Sa Majesté, soit en son propre nom, soit au nom de Sa Majesté, peuvent être intentées ou engagées par ou contre la Commission au nom de cette dernière, devant toute cour qui aurait juridiction si la Commission n'était pas mandataire de Sa Majesté. 1966-67, c. 34, art. 4.	Actions

CONSULTATIVE COMMITTEE

Consultative
Committee

5. (1) The Minister shall appoint a Consultative Committee consisting of a chairman and eight other members.

Tenure of
members

(2) Each of the members of the Consultative Committee shall be appointed for a term not exceeding three years, except that of those members first appointed three shall be appointed for a term of two years, three shall be appointed for a term of three years and three shall be appointed for a term of four years. 1966-67, c. 34, s. 5.

Functions of
Consultative
Committee

6. (1) The Consultative Committee shall meet at such times as are fixed by the Commission and shall advise the Commission on such matters relating to the production and marketing of dairy products as are referred to it by the Commission.

Remuneration
and expenses

(2) The members of the Consultative Committee may be paid for their services such remuneration and expenses as are fixed by the Governor in Council. 1966-67, c. 34, s. 6.

COMITÉ CONSULTATIF

Comité
consultatif

5. (1) Le Ministre doit nommer un comité consultatif comprenant un président et huit autres membres.

Durée du
mandat des
membres

(2) Chaque membre du comité consultatif est nommé pour un mandat de trois ans au plus, avec cette réserve que, parmi les membres nommés la première fois, trois le sont pour un mandat de deux ans, trois le sont pour un mandat de trois ans, et trois pour un mandat de quatre ans. 1966-67, c. 34, art. 5.

Fonctions du
comité
consultatif

6. (1) Le comité consultatif doit se réunir aux époques que fixe la Commission et doit conseiller la Commission sur les questions relatives à la production et à la commercialisation des produits laitiers qui lui sont renvoyées par la Commission.

Rémunération
et frais

(2) Les membres du comité consultatif peuvent recevoir pour leurs services la rémunération et les frais que fixe le gouverneur en conseil. 1966-67, c. 34, art. 6.

STAFF

Officers and
employees

7. (1) The Commission may
(a) appoint such officers and employees as are necessary for the proper conduct of the work of the Commission; and
(b) prescribe the duties of such officers and employees and, subject to the approval of the Treasury Board, prescribe the conditions of their employment.

Salaries and
expenses of
staff

(2) The officers and employees of the Commission appointed as provided in subsection (1) shall be paid such salaries and expenses as are fixed by the Commission with the approval of the Treasury Board. 1966-67, c. 34, s. 7.

PERSONNEL

Fonctionnaires
et employés

7. (1) La Commission peut
a) nommer les fonctionnaires et employés dont elle a besoin pour faire convenablement son travail; et
b) prescrire les fonctions de ces fonctionnaires et employés et, sous réserve de l'approbation du conseil du Trésor, prescrire les conditions de leur emploi.

Traitements et
frais du
personnel

(2) Les fonctionnaires et employés de la Commission nommés comme le prévoit le paragraphe (1) doivent recevoir les traitements et les frais que fixe la Commission avec l'approbation du conseil du Trésor. 1966-67, c. 34, art. 7.

OBJECTS OF THE COMMISSION

Objects of
Commission

8. The objects of the Commission are to provide efficient producers of milk and cream with the opportunity of obtaining a fair return for their labour and investment and to provide consumers of dairy products with a continuous and adequate supply of dairy products of high quality. 1966-67, c. 34, s. 8.

OBJETS DE LA COMMISSION

Objets de la
Commission

8. Les objets de la Commission sont d'offrir aux producteurs efficaces de lait et de crème l'occasion d'obtenir une juste rétribution de leur travail et de leur investissement et d'assurer aux consommateurs de produits laitiers un approvisionnement continu et suffisant de produits laitiers de bonne qualité. 1966-67, c. 34, art. 8.

	POWERS OF COMMISSION	POUVOIRS DE LA COMMISSION	
Powers	<p>9. (1) Subject to and in accordance with any regulations made under this Act, the Commission may</p> <p>(a) purchase any dairy product and package, process, store, ship, insure, import, export, or sell or otherwise dispose of any dairy product purchased by it;</p> <p>(b) make payments for the benefit of producers of milk and cream for the purpose of stabilizing the price of those products, which payments may be made on the basis of volume, quality or on such other basis as the Commission deems appropriate;</p> <p>(c) make investigations into any matter relating to the production, processing or marketing of any dairy product, including the cost of producing, processing or marketing that product;</p> <p>(d) undertake and assist in the promotion of the use of dairy products, the improvement of the quality and variety thereof and the publication of information in relation thereto; and</p> <p>(e) do all such acts and things as are necessary or incidental to the exercise of any of its powers or the carrying out of any of its functions under this Act.</p>	<p>9. (1) Sous réserve et en conformité de tous règlements établis aux termes de la présente loi, la Commission peut</p> <p>a) acheter tout produit laitier et emballer, traiter, emmagasiner, expédier, assurer, importer, exporter, vendre ou autrement aliéner tout produit laitier acheté par elle;</p> <p>b) faire des paiements au profit des producteurs de lait et de crème aux fins de stabiliser le prix de ces produits, ces paiements pouvant être faits d'après le volume, la qualité ou tout autre barème que la Commission peut estimer approprié;</p> <p>c) faire des recherches sur toute question relative à la production, au traitement ou à la commercialisation de tout produit laitier et notamment au prix de revient de la production, du traitement ou de la commercialisation de ce produit;</p> <p>d) encourager et aider à encourager la consommation des produits laitiers, l'amélioration de leur qualité et l'augmentation de leur variété, et la publication de renseignements y relatifs; et</p> <p>e) faire tous actes et toutes choses nécessaires ou accessoires à l'exercice de ses pouvoirs ou de ses fonctions aux termes de la présente loi.</p>	Pouvoirs
Inquiries	<p>(2) For the purpose of carrying out any investigation under paragraph (1)(c), the Commission has all the powers of a commissioner appointed under Part I of the <i>Inquiries Act</i>.</p>	<p>(2) En vue de poursuivre des recherches quelconques prévues à l'alinéa (1)c), la Commission possède tous les pouvoirs d'un commissaire nommé selon la Partie I de la <i>Loi sur les enquêtes</i>.</p>	Enquêtes
Rules of procedure	<p>(3) The Commission may make such rules as it deems necessary for the regulation of its proceedings, for the fixing of a quorum for any of its meetings and generally for the conduct of its activities under this Act. 1966-67, c. 34, s. 9.</p>	<p>(3) La Commission peut établir les règles qu'elle estime nécessaires pour régir ses délibérations, pour fixer le quorum de ses réunions et, en général, pour la conduite de ses activités en vertu de la présente loi. 1966-67, c. 34, art. 9.</p>	Règles de procédure
	DUTIES OF COMMISSION	DEVOIRS DE LA COMMISSION	
Commission to submit program to Minister	<p>10. (1) Each year, following determination by the Governor in Council pursuant to the <i>Agricultural Stabilization Act</i> of the total amount to be paid by the Agricultural Stabilization Board to the Commission for the purpose of stabilizing the price of milk and cream, the Commission shall submit to the Minister an outline of the program by which it proposes to carry out its functions under this Act for the following fiscal year.</p>	<p>10. (1) Chaque année, après la détermination, faite par le gouverneur en conseil en conformité de la <i>Loi sur la stabilisation des prix agricoles</i>, du montant total à payer par l'Office de stabilisation des prix agricoles à la Commission aux fins de stabiliser le prix du lait et de la crème, la Commission doit soumettre au Ministre les grandes lignes du programme grâce auquel elle se propose d'exercer ses fonctions aux termes de la présente loi pendant l'année financière suivante.</p>	La Commission doit soumettre un programme au Ministre

Manner of
carrying out
functions

(2) The Commission shall carry out its functions under this Act in a manner that will achieve its objects and meet its obligations from the moneys available to it under this Act. 1966-67, c. 34, s. 10.

Directions from
Governor in
Council or
Minister

11. In exercising its powers under this Act or the regulations in relation to the importation or exportation of any dairy product, the Commission shall comply with any directions from time to time given to it by the Governor in Council or the Minister. 1966-67, c. 34, s. 11.

REGULATIONS

Regulations

12. (1) The Governor in Council may make regulations regulating the marketing of any dairy product, including regulations

- (a) providing for the marketing of any dairy product on a quota basis;
- (b) designating the agencies through which any regulated product shall be marketed;
- (c) providing for the issue of licences to persons engaged in the production or processing of a regulated product for market, prescribing the fees therefor and providing for cancellation or suspension of licences;
- (d) prohibiting persons from engaging in the marketing of any dairy product, or any class, variety or grade thereof, in whole or in part except under the authority of a licence;
- (e) prescribing the books and records to be kept by persons engaged in the production or processing of a regulated product for market and the information to be furnished by such persons;
- (f) authorizing the Commission to fix, impose and collect levies or charges from persons engaged in the marketing of any dairy product or the production or processing of a regulated product for market and for such purposes to classify such persons into groups, fix the levies or charges payable by the members of the different groups and to use such levies or charges for the purpose of carrying out its functions under this Act;
- (g) providing for the seizure and disposal of any regulated product marketed in contravention of any regulation made under this section; and
- (h) generally, for carrying out the purposes and provisions of this Act.

(2) La Commission doit exercer les fonctions que lui assigne la présente loi de façon à réaliser ses objets et à s'acquitter de ses obligations à l'aide des deniers dont elle peut disposer aux termes de la présente loi. 1966-67, c. 34, art. 10.

Façon d'exercer
ses fonctions

11. Dans l'exercice de ses pouvoirs aux termes de la présente loi ou des règlements en ce qui concerne l'importation ou l'exportation de tout produit laitier, la Commission doit se conformer aux directives qui lui sont données à l'occasion par le gouverneur en conseil ou le Ministre. 1966-67, c. 34, art. 11.

Directives du
gouverneur en
conseil ou du
Ministre

RÈGLEMENTS

12. (1) Le gouverneur en conseil peut établir des règlements portant sur la commercialisation de tout produit laitier, notamment des règlements

Règlements

- a) instituant pour la commercialisation de chaque produit laitier un système de contingentement;
- b) désignant les organismes par l'intermédiaire desquels tout produit réglementé doit être commercialisé;
- c) visant l'émission de permis aux personnes qui produisent ou traitent un produit réglementé en vue de sa commercialisation, prescrivant les droits à verser pour ces permis et prévoyant leur annulation ou leur suspension;
- d) interdisant à toutes personnes de se livrer à la commercialisation de tout produit laitier, de quelque catégorie, variété ou qualité que ce soit, en totalité ou en partie, à moins d'y être autorisées par permis;
- e) prescrivant les livres et les registres que doivent tenir les personnes qui produisent ou traitent un produit réglementé en vue de sa commercialisation, ainsi que les renseignements que doivent fournir ces personnes;
- f) autorisant la Commission à fixer, imposer et percevoir des droits ou taxes que doivent verser les personnes qui se livrent à la commercialisation de tout produit laitier ou qui produisent ou traitent un produit réglementé en vue de sa commercialisation et, à ces fins, ranger ces personnes dans des groupes, fixer les droits ou les taxes payables par les membres des différents groupes et utiliser ces droits ou taxes pour l'exercice des fonctions que lui assigne la présente loi;
- g) prévoyant la saisie de tout produit réglementé commercialisé en violation d'un règlement établi en vertu du présent article, ainsi que la façon d'en disposer; et
- h) visant, de façon générale, la réalisation des objets de la présente loi et l'application de ses dispositions.

Regulation may be general or specific

(2) A regulation made under subsection (1) may be general or restricted to a specific dairy product, area, or group or class of persons. 1966-67, c. 34, s. 12.

(2) Un règlement établi en vertu du paragraphe (1) peut être général ou particulier à un produit laitier, à une région ou à un groupe ou une catégorie de personnes. 1966-67, c. 34, art. 12.

Un règlement peut être général ou particulier

Idem

13. The Governor in Council may make regulations requiring the registration of producers of milk and cream as a condition of the making of any payment under paragraph 9(1)(b) for the benefit of such producers and prescribing the books and records to be kept and the information to be furnished to the Commission by or on behalf of such producers. 1966-67, c. 34, s. 13.

13. Le gouverneur en conseil peut établir des règlements exigeant l'enregistrement, pour les producteurs de lait ou de crème, comme condition préalable à l'obtention d'un paiement effectué aux termes de l'alinéa 9(1)b) à l'avantage de ces producteurs et prescrivant les livres et registres à tenir ainsi que les renseignements à fournir à la Commission par ces producteurs ou pour leur compte. 1966-67, c. 34, art. 13.

Idem

EXPENDITURES

Administration expenses paid out of appropriations

14. All expenditures for salaries, travelling expenses and expenses of administration, excluding those that in the opinion of the Minister are directly attributable to action taken by the Commission to stabilize the price of any dairy product, shall be paid out of moneys appropriated by Parliament for the purpose. 1966-67, c. 34, s. 14.

14. Toutes les dépenses pour traitements, frais de voyage et d'administration, à l'exclusion de celles qui, de l'avis du Ministre, sont directement imputables aux mesures prises par la Commission pour stabiliser le prix de quelque produit laitier, doivent être payées sur les crédits affectés par le Parlement à cette fin. 1966-67, c. 34, art. 14.

Frais d'administration payés sur les crédits votés

Canadian Dairy Commission Account

15. (1) There shall be established in the Consolidated Revenue Fund a special account to be known as the Canadian Dairy Commission Account, in this section called the "Account".

15. (1) Est établi au Fonds du revenu consolidé un compte spécial appelé Compte de la Commission canadienne du lait, au présent article appelé le «Compte».

Compte de la Commission canadienne du lait

Credits to Account

(2) There shall be credited to the Account
(a) all moneys received by the Commission from its operations;
(b) all licence fees, levies and charges paid to the Commission;
(c) all loans made to the Commission by the Minister of Finance pursuant to section 16; and
(d) all amounts paid to the Commission by the Agricultural Stabilization Board under the *Agricultural Stabilization Act* for the purpose of stabilizing the price of any dairy product.

(2) Doivent être crédités au Compte
a) tous les deniers reçus par la Commission et provenant de ses opérations;
b) tous les honoraires des permis, tous les droits et toutes les taxes payés à la Commission;
c) tous les prêts consentis à la Commission par le ministre des Finances conformément à l'article 16; et
d) tous les montants payés à la Commission par l'Office de stabilisation des prix agricoles aux termes de la *Loi sur la stabilisation des prix agricoles* en vue de stabiliser le prix de quelque produit laitier.

Montants crédités au compte

Charges to Account

(3) There shall be paid out of the Consolidated Revenue Fund and charged to the Account
(a) all expenditures under this Act, except those to be paid pursuant to section 14; and
(b) all amounts paid to the Minister of Finance in repayment of loans made to the Commission pursuant to section 16 or as interest on any such loans.

(3) Doivent être payés sur le Fonds du revenu consolidé et débités au Compte
a) toutes les dépenses ressortissant à la présente loi, sauf celles qui doivent être payées conformément à l'article 14; et
b) tous les montants payés au ministre des Finances en remboursement des prêts consentis à la Commission conformément à l'article 16 ou à titre d'intérêt sur de tels prêts.

Montants imputés sur le compte

Limitation	(4) No payment shall be made out of the Consolidated Revenue Fund under this section in excess of the amount of the balance to the credit of the Account. 1966-67, c. 34, s. 15.	(4) Il ne doit être fait sur le Fonds du revenu consolidé, aux termes du présent article, aucun paiement en excédent du solde au crédit du Compte. 1966-67, c. 34, art. 15.	Limitation
Loans to Commission	16. (1) At the request of the Commission, the Minister of Finance may, out of the Consolidated Revenue Fund, make loans to the Commission on such terms and conditions as are approved by the Governor in Council for the purpose of exercising any of the powers of the Commission described in paragraph 9(1)(a).	16. (1) A la demande de la Commission, le ministre des Finances peut, sur le Fonds du revenu consolidé et selon les modalités qu'approuve le gouverneur en conseil, consentir des prêts à la Commission en vue de l'exercice de l'un quelconque des pouvoirs de la Commission mentionnés à l'alinéa 9(1)a).	Prêts à la Commission
Limitation	(2) The total amount outstanding at any time of loans made under subsection (1) shall not exceed three hundred million dollars. R.S., c. C-7, s. 16; 1974-75-76, c. 74, Sch. (AGR) vote 50a.	(2) Le montant total des prêts consentis aux termes du paragraphe (1) et en circulation à quelque moment que ce soit ne doit pas dépasser cent millions de dollars. 1966-67, c. 34, art. 16.	Limitation
GENERAL		DISPOSITIONS GÉNÉRALES	
Inclusion of dairy product on Import Control List	17. The Governor in Council may include on the Import Control List established under the <i>Export and Import Permits Act</i> any dairy product the import of which he deems it necessary to control for the purpose of implementing any action taken under this Act to support the price of that dairy product or that has the effect of supporting the price of that dairy product. 1966-67, c. 34, s. 17.	17. Le gouverneur en conseil peut inclure sur la liste de marchandises d'importation contrôlée établie aux termes de la <i>Loi sur les licences d'exportation et d'importation</i> tout produit laitier dont, à son avis, il est nécessaire de contrôler l'importation en vue de mettre en œuvre quelque mesure prise aux termes de la présente loi pour soutenir le prix d'un produit laitier quelconque ou qui a pour effet d'en soutenir le prix. 1966-67, c. 34, art. 17.	Inclusion d'un produit laitier sur la liste de marchandises d'importation contrôlée
Inspectors	18. The Commission may appoint or designate any person as an inspector for the purposes of this Act. 1966-67, c. 34, s. 18.	18. La Commission peut nommer ou désigner toute personne pour occuper le poste d'inspecteur aux fins de la présente loi. 1966-67, c. 34, art. 18.	Inspecteurs
Powers of inspector	19. (1) An inspector may at any reasonable time enter any place in which he reasonably believes there is any regulated product and may require any person to produce for inspection or for the purpose of obtaining copies thereof or extracts therefrom, any books, records or documents relating to that product.	19. (1) Un inspecteur peut, à toute heure raisonnable, pénétrer dans un lieu où, d'après ce qu'il croit raisonnablement, se trouve un produit réglementé et requérir de toute personne la production, pour les inspecter, de tous livres, registres ou documents se rapportant à ce produit ou en prendre des copies ou des extraits.	Pouvoirs des inspecteurs
Certificate of designation	(2) An inspector shall be furnished by the Commission with a certificate of appointment or designation and on entering any place under subsection (1) shall, if so required, produce the certificate to the person in charge thereof.	(2) Un inspecteur doit être pourvu par la Commission d'un certificat de nomination ou de désignation et, en pénétrant dans tout lieu prévu au paragraphe (1) doit, s'il en est requis, produire le certificat à la personne qui a la charge des lieux.	Certificat de désignation

Assistance to inspector	(3) The owner or persons in charge of any place described in subsection (1) and every person found therein shall give an inspector all reasonable assistance in his power to enable the inspector to carry out his duties and functions under this Act and shall furnish him with such information with respect to any regulated product found therein as he may reasonably require. 1966-67, c. 34, s. 19.	(3) Le propriétaire ou les personnes ayant la charge d'un lieu décrit au paragraphe (1) et toute personne qui s'y trouve doivent prêter à l'inspecteur toute aide raisonnable en leur pouvoir pour permettre à l'inspecteur d'exercer ses fonctions en vertu de la présente loi et doivent lui fournir les renseignements qu'il peut raisonnablement exiger concernant tout produit réglementé trouvé dans les lieux. 1966-67, c. 34, art. 19.	Aide à l'inspecteur
Obstruction of inspector	20. (1) No person shall obstruct or hinder an inspector in the carrying out of his duties or functions under this Act or any regulation made thereunder.	20. (1) Nul ne doit entraver ni gêner un inspecteur agissant dans l'exercice des fonctions que lui assigne la présente loi ou un règlement établi en vertu de ladite loi.	Entrave à un inspecteur
False statement	(2) No person shall make a false or misleading statement either verbally or in writing to an inspector engaged in carrying out his duties or functions under this Act or any regulation made thereunder. 1966-67, c. 34, s. 20.	(2) Nul ne doit faire une déclaration fausse ou trompeuse, verbalement ou par écrit, à un inspecteur agissant dans l'exercice des fonctions que lui assigne la présente loi ou un règlement établi en vertu de ladite loi. 1966-67, c. 34, art. 20.	Fausse déclaration
Offences and penalties	21. (1) Every person who, or whose employee or agent, contravenes or fails to comply with any provision of this Act or any regulation made thereunder is guilty of an offence and liable (a) on summary conviction to a fine not exceeding five hundred dollars or to imprisonment for a term not exceeding six months or to both; or (b) on conviction upon indictment to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding one year or to both.	21. (1) Toute personne qui a violé une disposition de la présente loi ou d'un règlement établi sous son régime, ou a omis de s'y conformer, ou dont l'employé ou l'agent a violé une telle disposition ou a omis de s'y conformer, est coupable d'une infraction et encourt a) sur déclaration sommaire de culpabilité, une amende d'au plus cinq cents dollars ou un emprisonnement d'au plus six mois, ou à la fois l'amende et l'emprisonnement; ou b) sur déclaration de culpabilité sur un acte d'accusation, une amende d'au plus deux mille dollars ou un emprisonnement d'au plus un an, ou à la fois l'amende et l'emprisonnement.	Infractions et pénalités
Offence by employee or agent	(2) In a prosecution for an offence under this section it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified.	(2) Dans des poursuites pour infraction au présent article, le fait d'établir que l'infraction a été commise par un employé ou un agent de l'accusé, que l'employé ou l'agent soit identifié ou non, constitue une preuve suffisante de l'infraction.	Infraction par l'employé ou l'agent
Defence	(3) Where it is established in any prosecution for an offence under this section that the offence was committed by an employee or agent of the accused, it is a defence to the accused that he exercised all due diligence to prevent the commission of the offence. 1966-67, c. 34, s. 21.	(3) Lorsqu'il est établi dans toute poursuite pour infraction au présent article que l'infraction a été commise par un employé ou un agent de l'accusé, le fait pour ce dernier d'avoir exercé toute diligence pour prévenir l'accomplissement de l'infraction constitue pour lui un moyen de défense. 1966-67, c. 34, art. 21.	Défense

	REPORT TO PARLIAMENT	RAPPORT AU PARLEMENT	
Report to Parliament	22. The Commission shall, within three months after the termination of each fiscal year, submit to the Minister in such form as he	22. La Commission doit, dans les trois mois qui suivent la fin de chaque année financière, soumettre au Ministre, sous la forme que ce	Rapport au Parlement

may prescribe, an annual report of the financial transactions and other actions taken under this Act, and the Minister shall lay the report before Parliament within fifteen days after the receipt thereof or, if Parliament is not then sitting, on any of the first fifteen days next thereafter that Parliament is sitting. 1966-67, c. 34, s. 22.

dernier peut prescrire, un rapport annuel des opérations financières et des autres mesures prises en vertu de la présente loi, et le Ministre doit présenter le rapport au Parlement dans un délai de quinze jours après qu'il a été reçu ou, si le Parlement n'est pas alors en session, l'un des quinze premiers jours où le Parlement siège par la suite. 1966-67, c. 34, art. 22.

APPENDIX 4

COMMISSION OF INQUIRY INTO CERTAIN ALLEGATIONS CONCERNING COMMERCIAL PRACTICES OF THE CANADIAN DAIRY COMMISSION

RULES OF PRACTICE AND PROCEDURE

INDEX TO PRACTICE AND PROCEDURE

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- XIV WRITTEN AND ORAL SUBMISSIONS

I OBJECTS AND LIMITS OF THE INQUIRY

1. By Order in Council P.C. 1979-1586 dated the 25th day of May, 1979, (a copy of which appears as Appendix I to this Reports.), this Commission was established "to inquire into certain allegations made by Schafer Bros. Ltd. and Mr. Michel Choquette in respect of dealings of the Canadian Dairy Commission, its officers and employees with Schafer Bros. Ltd., Montreal, Quebec during the years 1966 to 1977 in respect of the export from Canada of skim milk powder".
2. The Commission is further specifically required to define the issues raised by the said allegations, to determine all relevant facts premised on those issues, and "to ascertain whether the Canadian Dairy Commission, its officers and employees have acted lawfully and fairly in their dealings with Schafer Bros. Ltd.". The Commissioner must report on these matters. He must also make "a recommendation as to whether any compensation should be paid to Schafer Bros. Ltd. and, if so, the basis on which such compensation should be determined".
3. The Commissioner is also empowered to make such other recommendations as he may deem appropriate.

II PROCEDURE IN COMMISSIONER'S DISCRETION

1. This Practice and Procedure has been established to ensure the orderly conduct of the Inquiry, to ensure that all interested persons may know the nature of the evidence that will be submitted to the Commission at each Public Hearing and to ensure them of a full opportunity to be heard.
2. This Practice and Procedure is published to advise all interested persons of certain general aspects of the manner in which the Commissioner proposes to conduct the Inquiry.
3. Nothing in this Practice and Procedure shall restrict the Commissioner or derogate in any way from the right and duty of the Commissioner to conduct the Inquiry, including all hearings, in such manner as he deems appropriate in his sole discretion.

III COMMISSION COUNSEL AND STAFF

1. The duties of Commission Counsel are to assist the Commissioner, to assist in the orderly conduct of the Inquiry and to ensure that all relevant factors are submitted to the Commission.
2. Any member of the public or representative of any interested agency, group or corporation or any representative of any government may inquire at the Commission offices of any matter concerning the subject matter of this Inquiry and the Commission staff will attempt to satisfy any inquiry so made.

IV SCHEDULING OF HEARINGS

The Commissioner shall from time to time fix a time and place for each hearing and public notice of such will be given.

V STATEMENT OF ALLEGATIONS AND DEFINITION OF ISSUES

1. Prior to the Organizational Hearing, Commission Counsel will deposit for public inspection at the Commission's offices the following material:
 - (a) Commission advisors' statement setting out how the Canadian Dairy Commission operated during the years 1966 to 1977 relating to the export from Canada of skim milk powder.
 - (b) Commission advisors' outline of the economic aspects of the Inquiry.
 - (c) Commission Counsels' suggested summary statement or statements of the allegations that have been made by Schafer Bros. Ltd. and Mr. Michel Choquette in respect of dealings of the Canadian Dairy Commission, its officers and employees with Schafer Bros. Ltd., Montreal, Quebec during the years 1966 to 1977 in respect of the export from Canada of skim milk powder, together with documents and papers relating thereto.
 - (d) Commission Counsels' suggested definition of the issues raised by the allegations.
 - (e) Such other documents or papers as Commission Counsel deems appropriate.
2. At the Organizational Hearing Commission Counsel will file the materials referred to in paragraph 1, above, as part of the record, and submissions may be made at that time regarding the statement of the allegations and the definition of the issues.
3. At or after the Organizational Hearing the Commissioner, after hearing all representations, will determine what are the allegations and pronounce a statement of the allegations and will define the issues and pronounce a statement of the issues raised in the said allegations. The Commissioner may from time to time further define the issues by enlarging, consolidating, deleting or modifying the said statement of the issues.
4. The evidence to be given during the Inquiry will be confined to that which is relevant to the allegations determined and the issues defined as set out above.

VI INSPECTION AND RECEIPT OF INFORMATION

Any member of the public, during public business hours of the Commission's offices, may inspect the documents deposited pursuant to Rule V hereof, the transcripts of the Public Hearings and any material filed as evidence with the Commission, and receive copies thereof where feasible provided such person pays a charge of 20 cents per page to defray the costs of such copying. (A copy of this Practice and Procedure and the Order in Council setting up the Commission, however, will be supplied to any person free of charge).

VII ORGANIZATIONAL HEARINGS

1. An Organizational Hearing shall be held prior to the Public Hearings. At the Organizational Hearing all interested members of the public or representatives of any interested agency, group, corporation or government will be asked to file, in writing, suggestions for any amendment which he or she wishes the Commission to consider to Commission Counsels' suggested statement of the allegations or definition of the issues.
2. (a) At the Organizational Hearing any member of the public or representative of any interested agency, group, corporation or government who wishes to have counsel represent his, her or its position in any or all of the Public Hearings of the Commission will be invited to request that they be permitted to have counsel participate on their behalf at any or all Public Hearings of the Commission and to have the role of such counsel in such hearings determined. Any member of the public or representative of any interested agency, group, corporation or government who intends to make such request at such Organizational Hearing shall file at the Commission's offices three (3) days prior to the date fixed for such Organizational Hearing a statement which shall set out the role that it is proposed that such counsel will take at any Public Hearing and the reason for the wish to be represented by counsel.
2. b) Any member of the public or representative of any interested agency, group, corporation or government who fails to file such statement, or having filed such statement fails to attend or to be represented at such Organizational Hearing with respect to such request, shall, subject to the provisions of Rule X, be deemed to have waived any right to have counsel attend at any Public Hearing other than in a capacity as an observer.
3. Such other matters as may be relevant will also be dealt with at the Organizational Hearing.
4. Such further and other Organizational Hearings may be held as the Commissioner deems appropriate.

VIII EVIDENCE STATEMENTS AND WITNESSES

1. Any member of the public or representative of an interested agency, group, corporation or government who wishes to appear and adduce evidence before the Commission shall file at the Commission's offices, on or before such date as is specified by public notice as

the last day for filing of evidence statements, an evidence statement which shall contain the following:

- (a) His or her name, address and telephone number;
 - (b) A statement as to whether he or she has a general interest or a special interest in the inquiry and the nature of his or her general or special interest;
 - (c) A statement as to whether his or her evidence will be of a factual nature or of an opinion nature. If his or her evidence will be of an opinion nature, he or she shall specify the special skill which he or she possesses by reason of experience or study which has rendered him or her peculiarly skilled on the topic relevant to the allegations and issues on which he or she intends to give evidence;
 - (d) A statement identifying the particular allegation or issue, or allegations or issues, to which his or her evidence will be directed;
 - (e) A full statement of his or her proposed evidence;
 - (f) If he or she intends to introduce any exhibit before the Commission to supplement or explain his or her statement, such as supporting documents, he or she shall attach to the statement a separate page, listing such exhibits (and see paragraph 5, below);
 - (g) If he or she intends to rely in whole or in part on the testimony of an expert, he or she shall attach to the statement a separate page or pages which shall set out the name, address and telephone number of such expert, the qualifications of such expert, the proposed evidence of such expert and a written acknowledgement by such expert that he or she is willing to attend before the Commission and to submit to examination and cross-examination if required to do so;
 - (h) An acknowledgement that he or she will attend before the Commission and submit to examination and cross-examination if required to do so;
 - (i) His or her signature.
2. Any evidence statement which is not in compliance with these provisions will not be accepted for filing but shall be returned for revision, amendment or correction as the case may be.
 3. The Commission staff will be available at the Commission's office to provide general guidance to members of the public in the preparation of evidence statements.
 4. An evidence statement accepted for filing shall be available for public inspection and copying pursuant to the provisions of Rule VI.
 5. If it is stated, in an evidence statement, that the person filing such evidence statement intends to introduce any exhibits before the Commission, he or

she must file a copy of the proposed exhibit or exhibits at the time of filing his or her evidence statement. If he or she fails to do so, and in the absence of special reason being shown to the satisfaction of the Commissioner as to why and the extent to which an exception should be made to this Rule, the Commission will not receive such exhibits into evidence.

6. In the absence of special reason being shown to the satisfaction of the Commissioner as to why and the extent to which any exception should be made to this Rule (for example, a witness appearing pursuant to a subpoena), no oral evidence will be received by the Commission from any person who has not filed an evidence statement, or from any expert with respect to whose evidence a statement has not been filed as set out above.
7. A person who has filed an evidence statement shall, when giving oral evidence, be limited to such matters as are set out in his or her evidence statement, except that a witness will be allowed to give such additional evidence as may be necessary to explain or demonstrate the facts set out in his or her evidence statement.
8. Where special circumstances exist and the Commissioner deems it appropriate, an evidence statement may be filed by Commission Counsel as part of the record of a public hearing if it is verified by affidavit.
9. If it appears to Commission Counsel, after reviewing evidence statements filed with respect to any allegation or issue, to be considered by the Commission, that there is evidence in addition to the evidence set out in the evidence statements, filed, which should be adduced before the Commission, Commission Counsel shall be entitled to call witnesses with respect to such evidence.
10. Commission Counsel shall endeavour to file an evidence statement with respect to any such witnesses, together with any exhibits to be introduced before the Commission through such witness, prior to the date fixed for the Public Hearing at which such witness will testify, provided that failure to do so shall not preclude Commission Counsel from calling such witness and introducing any such exhibits notwithstanding anything herein to the contrary.
11. The Commissioner in his discretion may allow reply evidence to rebut evidence given by another witness or witnesses and, in that event, the evidence of such rebuttal witness or witnesses shall be limited exclusively to rebuttal and the provisions of Rule VIII (6) shall not apply to any such witness or witnesses.
12. A Commission Counsel will be present at all Hearings and shall call such witnesses to give oral evidence as he in his discretion deems advisable.

IX THE SUMMONING OF WITNESSES AND THE PRODUCTION OF DOCUMENTS

The Commissioner on application may authorize the issuance of a subpoena to compel the attendance of a witness before any Public Hearing to give evidence and to

produce such documents and things as may be deemed requisite. Any person may request the Commissioner to issue such subpoena by filing written application at the Commission's offices at least fifteen (15) days prior to the date fixed for the Public Hearing at which it is intended to summon such witness. The application shall set out the name and address of the applicant and of the proposed witness, the nature of the evidence, document or thing believed to be possessed by such witness and the reason why the applicant believes the testimony, document or thing in the possession of such witness to be important. The applicant shall be advised of the Commissioner's decision, as to whether a subpoena should be issued or not, at least ten (10) days prior to the date fixed for the Public Hearing at which such witness is to be called. If it is the decision of the Commissioner to grant such application, it is the responsibility of the applicant to arrange for service of such subpoena and to pay to the witness to be subpoenaed such witness fees and conduct money as are prescribed in the Rules of the Federal Court of Canada.

X RIGHT TO QUESTION WITNESSES AND MAKE SUBMISSIONS

1. Any member of the public or representative of an interested agency, group, corporation or government who is not represented by counsel pursuant to the provisions of Rule VII but who, as a result of specific evidence given or to be given at a Public Hearing, wishes to be represented by counsel, may request permission from the Commissioner to be represented by counsel for purpose of cross-examining witnesses, making submissions and presenting evidence.
2. Any member of the public or representative of an interested agency, group, corporation or government may request Commission Counsel to ask a particular question of a witness at a Public Hearing and Commission Counsel may, in his discretion, ask such question.

XI NOTICES

1. Notice that the materials referred to in Rule V(1), above, have been deposited at the Commission's offices for inspection will be sent to Schafer Bros. Ltd., to Mr. Michel Choquette, to the Canadian Dairy Commission, and to such other persons as may be interested or the Commissioner deems appropriate.
2. All notices of Organizational Hearings and Public Hearings shall be published in such newspapers, periodicals and other manner as the Commissioner in his discretion may determine.
3. The Registrar of the Commission shall cause to be published, as aforesaid, the following:
 - (a) Initial Notice of the Establishment of the Commission and its purpose at such time as may be determined by the Commissioner;
 - (b) Notice of any Organizational Hearing within a reasonable time prior to the date fixed for such Organizational Hearing;

- (c) Notice of each Public Hearing for such days prior to the date fixed for any such Hearing as may be determined by the Commissioner.

4. No notice of any adjourned Public Hearing shall be published unless such a notice is deemed by the Commissioner to be advisable.

XII COMMUNICATION WITH THE COMMISSIONER

All communication with the Commission or the Commissioner shall be through and by the Registrar.

XIII PAYMENT OF COSTS OF REPORTS, RESEARCH, WITNESS FEES AND WITNESS EXPENSES

1. The Commissioner shall only consider authorizing, subject to approval by the Treasury Board, the payment of costs of such research, preparation of reports and witness fees on request of Commission Counsel as being necessary to enable Commission Counsel to adduce evidence before the Commission of all relevant factors as referred to by Rule III (1) and VIII hereof, or as the Commissioner otherwise deems necessary.
2. The Commissioner may in conjunction with his report recommend that certain payment be made to specific persons, agencies, groups or corporations who participate in the Inquiry to help defray the costs of their participation.

XIV WRITTEN AND ORAL SUBMISSIONS

On the conclusion of Public Hearings the Commissioner may, if he deems advisable, request oral or written submissions.

Dated this 9th day of October 1979.

Commission of Inquiry into Certain Allegations
Concerning Commercial Practices of the
Canadian Dairy Commission
171 Slater Street
Vanguard Building, 11th Floor
Ottawa, Ontario
Tel. (613) 995-9568

MAILING ADDRESS:

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Station "B"
Ottawa, Ontario
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APPENDIX 5
STATEMENT OF THE ALLEGATIONS

As suggested by Commission Counsel
(Rule V (1) (c))

and

As amended (as underlined) at the
request of Counsel for Schafer Bros. Ltd.

I. The Canadian Dairy Commission (hereinafter referred to as the "C.D.C."), its officers and employees acted unlawfully or unfairly during the years 1966 to 1977 in their dealings with Schafer Bros. Ltd. relating to the export from Canada of skim milk powder in that:

A.1.(a) The C.D.C. excluded Schafer Bros. Ltd. from the business of supplying Canadian skim milk powder to CONASUPO (a Mexican agency), and diverted business opportunities with CONASUPO to itself and to others, despite the following facts:

- (i) The interest of CONASUPO in Canadian skim milk powder resulted substantially from promotional efforts made and expense incurred by Schafer Bros. Ltd.; and
- (ii) The promotional efforts were made and the expense was incurred by Schafer Bros. Ltd. in reliance upon assurances by the C.D.C. to Schafer Bros. Ltd. that the C.D.C. would cooperate fully with Schafer Bros. Ltd. in the event that possibilities of sales to CONASUPO materialized.

(b) In excluding Schafer Bros. Ltd. as aforesaid:

- (i) The C.D.C. used information supplied to it by Schafer Bros. Ltd. at the request of the C.D.C., which information had been obtained by Schafer Bros. Ltd. in the course of making its promotional efforts and investment;
- (ii) The C.D.C. took unfair advantage of its control over large stocks of Canadian skim milk powder and of its power to determine and grant export subsidies, and not so as to limit the generality of the foregoing, more specifically in that:
 - a) on April 26, 1968, the C.D.C. refused to provide 400 metric tons of high heat powder with a production date of 90 days or less, thereby causing Schafer Bros. Ltd. to be unable to be awarded a contract, and
 - b) on June 26, 1968 the C.D.C. refused to provide 330 metric tons of low heat powder, thereby causing Schafer Bros. Ltd. to be unable to be awarded a contract;
- (iii) The C.D.C. falsely represented that CONASUPO insisted upon dealing directly with the C.D.C.; and in fact in 1967, the C.D.C. proposed a direct agency to agency agreement with CONASUPO and Mr. S.C. Barry, then Chairman of the C.D.C. flew to Mexico in Oct. 1967 in order to negotiate such a direct agreement;

(iv) The C.D.C. did not reveal to Schafer Bros. Ltd. its intentions to take over the market for the sale of Canadian skim milk powder to CONASUPO until this taking over took place in 1971-1972;

(v) The C.D.C. on several occasions was deliberately vague in its representations to Schafer Bros. Ltd. concerning availability of supplies and the amount of subsidy to be given, and

(vi) In 1971, the C.D.C. officially took over the market for the sale of Canadian skim milk powder to CONASUPO, thereby making it impossible for Schafer Bros. Ltd. to benefit from the 13 years of investment and promotional efforts which it had spent in the development of this market.

2. In January 1968 the C.D.C. prevented Schafer Bros. Ltd. from taking advantage of the first opportunity to make a major sale of Canadian skim milk powder to CONASUPO by:

- (a) refusing to make its stocks available to Schafer Bros. Ltd.,
- (b) refusing to cooperate with respect to subsidies and financial arrangements,
- (c) not indicating its intention of competing directly with Schafer Bros. Ltd. for a CONASUPO tender until January 24, 1968, and
- (d) making a direct offer itself to CONASUPO involving C.D.C. stocks and benefitting from subsidies and financial arrangements which the C.D.C. had accorded to itself.

3. In August 1968 the C.D.C. sold a large quantity of skim milk powder to competitors of Schafer Bros. Ltd. at a price considerably lower than had been offered unsuccessfully by Schafer Bros. Ltd. to the C.D.C. for skim milk powder in January 1968, and considerably lower than was subsequently offered to Schafer Bros. Ltd. in October 1968. In fact some of the powder which was actually delivered by the C.D.C. constituted fresh 1969-produced powder. The C.D.C. thereby prevented Schafer Bros. Ltd. for almost two years from competing effectively in the sale of skim milk powder to certain foreign countries.

4. In the spring of 1969, the C.D.C. made it unnecessarily difficult for Schafer Bros. Ltd. to fill its first order from CONASUPO by:

- (a) repeatedly giving false and misleading information to Schafer Bros. Ltd. as to the availability, location and the heat treatment and bacteria characteristics of the skim milk powder available from the C.D.C. for the transaction,
- (b) refusing to cooperate concerning financial arrangements, and
- (c) causing Schafer Bros. Ltd. to incur additional laboratory, manufacturing, and transportation costs in order for them to be able to fulfil CONASUPO's contractual requirements.

5. In the spring of 1969, the C.D.C. prevented Schafer Bros. Ltd. from winning a contract with CONASUPO for the supply of 25000 tons of skim milk powder by:
 - (a) giving false and misleading information to Schafer Bros. Ltd. regarding the payment of export subsidies to Canadian firms dealing through foreign agents,
 - (b) refusing to make its stocks available to Schafer Bros. Ltd. and then agreeing to make its stocks available to other Canadian exporters, and
 - (c) discouraging Schafer Bros. Ltd. by announcing its intention of making a direct offer by itself to CONASUPO, involving C.D.C. stocks and benefitting from subsidies and financial arrangements which the C.D.C. would accord to itself.
 6. In 1969, 1970 and 1971, Schafer Bros. Ltd. lost out to a competitor on sales to CONASUPO as a direct result of irregular behaviour on the part of the senior officials of the C.D.C.
 7. In 1971, the C.D.C. frustrated a maturing business opportunity for Schafer Bros. Ltd. to structure a combination wheat/powder deal with Mexico by selling a large quantity of skim milk powder to CONASUPO.
 8. In the winter of 1975-1976, when the Philippines invited tenders for a large three year contract the C.D.C. made it unnecessarily difficult for Schafer Bros. Ltd., which was the only Canadian trader contending, to compete with foreign competitors by
 - (a) its lack of cooperation in providing timely assurances of prices and supplies, and also regarding preparation and support for important meetings, and
 - (b) falsely denying that a request had come from Manila for the Commission to attend an important meeting.
 9. In 1977, the C.D.C. made it virtually impossible for Schafer Bros. Ltd. to take advantage of the following business opportunities by failing to answer its inquiries or by unduly delaying information regarding the availability of supplies, subsidies or potential sale opportunities:
 - (a) a Peruvian inquiry in March concerning a certain type of high stabilized heat powder;
 - (b) a Mexican inquiry in August for a potential sale of 30000 tons of skim milk powder; and
 - (c) an Algerian call for tenders in November for 10000 tons of skim milk powder and 6000 tons of anhydrous milk.
 10. In 1977, the C.D.C. unnecessarily required an attestation certificate for Schafer Bros. Ltd. to export 1000 tons of skim milk powder to be used as animal feed in Chile.
- B. 1. The C.D.C. competed unnecessarily with private Canadian exporters.
2. The C.D.C. did not favour Canadian exporters, who dealt directly with foreign purchasers, over exporters who dealt through foreign agents.
 3. The C.D.C. did not offer reasonable assistance to private Canadian exporters in that:
 - (a) it did not cooperate fully in making supplies of skim milk powder readily available from its stocks, and
 - (b) it was inflexible with regard to the terms and conditions of financing transactions and in adjusting export subsidies.
 4. The C.D.C. was not sufficiently aggressive and efficient in assisting Canadian exporters, who were faced with stiff competition, to develop and maintain markets for surpluses of skim milk powder.
 5. The criteria and process by which the C.D.C. selected exclusive agents for its foreign sales were not subjected to adequate public scrutiny.
 6. The C.D.C. did not take specifications of importing countries adequately into account when adopting measures for the development of the domestic dairy industry.
 7. In 1969 the C.D.C. had in its stocks skim milk powder which contained bacteria characteristics substantially outside the C.D.C.'s own purchasing requirements.
 8. The C.D.C. showed preference to certain Canadian exporters of skim milk powder other than Schafer Bros. Ltd. by storing surplus milk powder in these other exporters' warehouses, by naming some of them to the Consultative Committee, by appointing them marketing agents of the C.D.C. for certain international markets, and by suggesting their names as potential beneficiaries to other Canadian Government Departments and international clients.
- II. As a result of the conduct referred to in Part I, above, Schafer Bros. Ltd. suffered losses and is entitled to be compensated for those losses.

APPENDIX 6

THE ISSUES RAISED BY THE ALLEGATIONS (Rule V(1)(d))

1. Are the allegations contained in Part I of the Statement of Allegations, or any of them, true?
2. If the allegations contained in Part I of the Statement of Allegations, or any of them, are true:
 - (a) Were the policies, practices and controls that were employed by the Canadian Dairy Commission consistent with the objects of the Canadian Dairy Commission as prescribed by section 8 of the Canadian Dairy Commission Act, R.S.C. 1970, c.C-7, and were they within the powers of the Canadian Dairy Commission as conferred by section 9 of that Act?

- (b) Were such policies, practices and controls necessary to achieve the objects of the Canadian Dairy Commission as prescribed by section 8?
 - (c) Were the powers of the Canadian Dairy Commission exercised within the framework of any general policy or criteria adopted to achieve the objects of the Canadian Dairy Commission as prescribed by section 8?
 - (d) Did the Canadian Dairy Commission or any of its officers or employees act unlawfully or unfairly in their dealings with Schafer Bros. Ltd. during the years 1966 to 1977?
3. If and to the extent that the Canadian Dairy Commission, its officers or employees acted unlawfully or unfairly during the years 1966 to 1977 in their dealings with Schafer Bros. Ltd. relating to the export from Canada of skim milk powder, did any such acts cause damage to Schafer Bros. Ltd.?
 4. Should any compensation be paid to Schafer Bros. Ltd. and, if so, upon what basis should it be determined?

APPENDIX 7

NAMES AND ADDRESSES FOR DIRECT MAILING OF COMMISSION PAPERS

1. (Canadian Dairy Commission
2197 Riverside Drive
Ottawa, Ont.)

Mr. Elwood G. Hodgins, Vice-Chairman
Mr. H.M. Johnson, Commissioner
Mr. L. J. Marcellus, Director Marketing Operations
Mr. R. Tudor Price, Director, Market Intelligence
Mr. R. Cloutier, Economic Advisor
Mr. R.G. Lalonde, Director, Information
Mr. W.A.J. Lenhardt, Legal Services, Dept. of Justice

Dr. S.C. Barry
1004 — 200 Rideau Terrace
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Mr. Ellard J. Powers
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Beachburg, Ont. K0J 1C0

Mr. J. Thibodeau
National Farm Products Marketing Council
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Centre Bldg.
300 Sparks Street — 2nd Floor
Ottawa, Ont. K1R 7S3

Mr. L. Atkinson
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(Tel.) 263-8113

Mr. J.R. Sherk
1072 Geurtin Street
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Dr. H. Mestern
1078 Wiseman Cr.
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2. (Agriculture Canada
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Central Experimental Farm
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Ottawa, Ont. K1A 0C5)

Mr. G. Lussier, Deputy Minister
Dr. G. Fleischmann, Senior Assistant Deputy Minister
Dr. G.I. Trant, Senior Assistant Deputy Minister
Mr. P.C. Caskey, Director General, Agricultural
Development Directorate
Mr. H. Migie, Director, Food Markets Analysis
Division
Dr. D. Hedley, Director, Commodity Market Analysis
Dr. B.B. Perkins, Director, Production Analysis
Mr. Bruce Wilson, International Market Development
Market Development Directorate, Agriculture
Canada
Rm. 6119, Sir John Carling Bldg., Carling Avenue
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Miss Veronica McCormick, Commodity Market
Analysis
Mr. M.E. Cluff, Economist, Policy Planning and
Economics
Mr. G.J. Birks, Economist, Policy Planning and
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Mr. Sherman Lyman, Legal Services, Dept. of Justice

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The Honourable H.A. Olson
The Senate
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Mr. J. Cole, Acting Assistant Director, Resources
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5. (Treasury Board)

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(Oct. 29) 3 copies sent to:
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10. (Department of Justice)

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Jay I. Nicholson Ltd.
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Attn: Mr. Noel C. Partridge

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Sous-ministre de l'Agriculture
200-A chemin Ste-Foy
Québec (Québec)
G1R 4X6
Téléphone: 187-9-643-2336

Mr. Kenneth Lantz
Deputy Minister of Agriculture
and Food
Parliament Buildings
Toronto, Ontario
M7A 1A3
Telephone: 186-9-965-1044

Mr. R.C. Bailey
Deputy Minister of Agriculture
159 Legislative Building
Winnipeg, Manitoba
R3C 0V8
Telephone: 161-946-7231

Mr. A.J. Webster
A/Deputy Minister of Agriculture
Government Administration Building
Regina, Saskatchewan
S4S 0B1
Telephone: 121-9-565-5170

Dr. J.G. O'Donoghue
Deputy Minister of Agriculture
Agriculture Building
Edmonton, Alberta
T5K 2C8
Telephone: 176-9-427-2145

Mr. Sig B. Peterson
Deputy Minister of Agriculture
Legislative Building
Victoria, B.C.
V8V 1X4
Telephone: 175-569-387-5121

NEW BRUNSWICK

Mr. George B. Whalen
Secretary
New Brunswick Milk Marketing Board
P.O. Box 490
Sussex, New Brunswick
EOE 1P0

NOVA SCOTIA

Secretary
Nova Scotia Milk Producers
Association
P.O. Box 784
Truro, Nova Scotia
B2N 5E8

PRINCE EDWARD ISLAND

Secretary
P.E.I. Dairy Producers Association
Farm Centre
420 University Ave.
Charlottetown, P.E.I.
C1A 7Z5

Mr. David Clemons
Manager
Holstein-Friesian Association of
Canada
41 George Street
Brantford, Ontario
N3T 5R4

18. PROVINCIAL MINISTERS AND DEPUTY MINISTERS OF AGRICULTURE

Mr. Gerald O' Reilly
Deputy Minister of Rural Agricultural
and Northern Development
Confederation Building
St. John's, Newfoundland
A1C 5T7
Telephone: 147-9-737-3228

Mr. Walter V. Grant
Deputy Minister of Agriculture and
Marketing
1649 Hollis Street
Halifax, Nova Scotia
B3J 2M4
Telephone: 162-9-424-3244

19. Trade Journals

Country Guide
Western Canada
1760 Ellice Avenue
Winnipeg, Manitoba
R3H 0B6

Farm and Country
3rd Floor
10 St. Mary Street
Toronto, Ontario
M4Y 1P9

Food in Canada
481 University Avenue
Toronto, Ontario
M5W 1A7

La Terre de Chez Nous
Head Office
Bernard Danis
National Advertising
Manager
515 Viger Avenue
Montreal, Ontario
H2L 2P2

Modern Dairy
Suite 21
698 Weston Road
Toronto, Ontario
M6N 3R3

Le Producteur Agricole
P.O. Box 1367
11 Principale Street
Bedford, Quebec
J0J 1A0

Country Guide
Eastern Canada
150 Eglinton Avenue E.
Toronto, Ontario
M4P 1E8

Food in Canada
625 President Kennedy Ave.
Montreal, Quebec
H3A 1K5

La Terre de Chez Nous
Ontario & U.S.A.
Mr. Tom McGoey
Advertising Representative
Suite 615, Victoria Tower
44, Victoria Street
Toronto, Ontario
M5C 1Y2

20. Others

The Honourable Warren Allmand
House of Commons
Confederation Building
Rm 783-CB
Ottawa, Ontario
K1A 0A6

Dr. R.M.A. Loynes
Professor
Agricultural Economics
University of Manitoba
Winnipeg, Manitoba

Dr. J. Forbes
Professor
Business Administration
University of British Columbia
Vancouver, B.C.

Professor T.J. Warley
Agricultural Economics
University of Guelph
Guelph, Ontario

Professor D. Hartle
University of Toronto
Toronto, Ontario

Consumers' Association of Canada
Yvonne Miles, President
200, 1 Avenue
Ottawa, Ontario

Standing Senate Committee on
Agriculture
The Senate
Ottawa, Ontario
K1A 0A4
Attention: Mr. Albert F. Chambers

M. Paul Pouliot
Journaliste "La Presse"
7 rue St. Jacques
Montréal, Québec
H2Y 1K9

21. Persons Requesting Ongoing Notices Pursuant to
Notice of Establishment

Mr. Jean Doiron
La Voie Acadienne
C.P. 420
Summerside, I.P.E.
C1N 4K2

Mr. J.D. Wilson
131 Parkdale Ave., Apt. 66
Ottawa, Ontario
K1Y 1E7

Mr. L. Benzley
Box 211
Vancouver, B.C.
V6C 2M3

M. Herbert Chas Colling
Agricultural Commentator
CBC Windsor Radio
267 Pellissier Street
Windsor, Ontario
N9A 4K5

M. Marcel Viau
10 535 rue St-Firmin
Montréal, Québec
H2B 2G9

M. M. L. Poisson
4837 Hutchison, #4
Montréal, P.Q.
H2V 4A4

M. Allan Lutfy
Lavery, O'Brien
P.O. Box 2555
Station "D"
Ottawa, Ontario
K1P 5W6

Ministry of Agriculture and Food
Minister's Office
801 Bay Street
11th Floor
Toronto, Ontario
M7A 1A2

Mr. Blair Murray
Dairy Cattle Specialist
Ontario Ministry of Agriculture
& Food
Kemptville, Ontario

Mrs. Barbara Wallace, M.L.A.
Cowichan-Malahat
Room 227
Legislative Buildings
Victoria, B.C.
V8V 1X4

APPENDIX 8 APPEARANCES

The counsel or representatives who appeared throughout or at various times during the Inquiry on behalf of interested persons or bodies are as follows:

1. Mr. Bruce C. McDonald and Mr. Jean-Guy Caron for the Commission of Inquiry;
2. Mr. Richard Lande, Mr. Alex Paterson, Q.C., Mr. Cyril Schwisberg, Q.C., for Schafer Bros. Ltd. and Mr. Michel Choquette;
3. Mr. Jean Bruneau, Q.C. and Mr. Wayne A.J. Lenhart, for the Canadian Dairy Commission;
4. Mr. E. Peter Newcombe, Q.C. and Mr. D. Simmons for Mr. H.R. Tudor Price, Director of Marketing Intelligence for the Canadian Dairy Commission;
5. Mr. Ronald W. Chisholm, Q.C. and Mr. Gregory W. Cooper for Ronald A. Chisholm Ltd.;
6. Mr. Donald G. Grant for Mr. L.J. Marcellus, Director of Marketing Operations for the Canadian Dairy Commission;
7. Mr. John P. Nelligan Q.C. for Mr. Gilles Choquette, Chairman of the Canadian Dairy Commission;
8. Mr. James B. Chadwick, Q.C. and Ms. W. Bryans for Ault Foods Ltd.;
9. Mr. John Wilson and Mr. F.P. Monteleone, for Mr. Robert J. Bertrand, Director of Investigation and Research, Combines Investigation Act;
10. Mr. Ronald B. Bishop and Mr. D. Curtis Bishop, for Eastern Townships Produce Ltd.;
11. Mr. James H. Smellie for Dairy Farmers of Canada;

12. Mr. Paul Olivier for the Secretary of State for External Affairs;
13. Mr. Duff Friesen for the Attorney General of Canada and for the Secretary of State for External Affairs.

APPENDIX 9 LIST OF WITNESSES

1. Dr. G.A. Hiscocks and Mr. L. Stephens
2. Dr. Lawrence A. Skeoch
3. Mr. David Schafer
4. Mr. George Schafer
5. Mr. Michel Choquette
6. Mr. Henri Trochu
7. Mr. J. R. Sherk
8. Mr. Jules Thibodeau
9. Dr. S. C. Barry
10. Mr. Philippe Pariseault
11. Mr. L. J. Marcellus
12. Mr. Gilles Choquette
13. Mr. Samuel G.K. Ault
14. Mr. Alex Hunt
15. Mr. S. B. Williams
16. Mr. H. R. Tudor Price
17. Mr. Ronald Bishop
18. Mr. Walter I. Pelley
19. Mr. Timothy A. Chisholm
20. Mr. Dr. James A. Elliot
21. Mr. Ellard J. Powers
22. Mr. G.R. McLaughlin
23. Mr. H.M. Johnson
24. Mr. Elwood G. Hodgins
25. Mr. Raymond M. Cloutier
26. Mr. John Tait
27. Mr. Steven Rosell
28. Mr. James R. Midwinter

Persons Interviewed in Mexico City

29. Sr Ben Nordermann
30. Sr Jose Luis Uriarte
31. Lic. Baltazar Rodriguez Ayala
32. Lic. Eduardo de la Torre

33. Sr Guiseppe Rocchi
34. Sr Alberto J. Benolol
35. Sr Eurique Rios Velazquez
36. Sr Fidenzio Arguelles

APPENDIX 10

LIST OF EXHIBITS

Exhibit 1: Copy of Orders in Council in both official languages of P.C. 1979-1586, dated May 25, 1979 and P.C. 1979-1649 together with P.C. 1979-1653 both dated June 13, 1979

Exhibit 2: Copy of Commission appointing the Honourable Mr. Justice Hugh F. Gibson dated June 22, 1979, signed by Mr. L. McCann, Deputy Registrar General of Canada (in both official languages)

Exhibit 3: Rules of Practice and Procedure of this Commission of Inquiry (in both official languages)

Exhibit 4: Notice of Establishment of this Commission of Inquiry (in both official languages)

Exhibit 5: Affidavit (re: Service and depositing of documents for public inspection) of Marcel A.J. Dompierre sworn November 22, 1979 (two (4 rings) black 9 x 14 binders containing pages 1 to 437)

Exhibit 6: Materials prepared by Mr. Michel Choquette and submitted to government officials prior to the establishment of the Commission of Inquiry (9 yellow volumes 9 x 14 containing approximately 2,400 pages)

Exhibit 7: Statement of the Allegations as suggested by the Commission Counsel in both official languages (Rule V(1) (c))

Exhibit 8: The Issues Raised by the Allegations as suggested by Commission Counsel in both official languages (Rule V(1) (d))

Exhibit 9: Review of the Canadian Dairy Commission prepared by Dr. G.A. Hiscocks assisted by Mr. L. Stephens, revised November 9, 1979 (Rule V(1) (a))

Exhibit 10: Materials relating to the paper filed as exhibit 9 above

Exhibit 11: Outline of Some of the Economic Aspects of the Inquiry prepared by Dr. L.A. Skeoch dated November 1979 (Rule V(1) (b))

Exhibit 12: Relevant Documents compiled by Commission Counsel prior to the organizational hearing (6 blue volumes 9 x 14 containing pages 1 to 1211)

Exhibit 13: Affidavit (re: Assurance and production of documents) of Marcel A.J. Dompierre sworn November 22, 1979 (one 4 ring black binder 9 x 14 containing pages 1 to 59)

Exhibit 14: Canadian Dairy Commission Annual Reports from 1966 to 1978 inclusive with financial statement for year ending 1979 in both official languages with the exception of the 1966/67 Annual Report

Exhibit 15: Copy of memorandum with attachment, dated November 26, 1979 transmitted to all counsel from Registrar Re: Notices

Exhibit 16: (40 page report, 8½ x 11) entitled "Milk Powder Mission to South America Jan. 27 to Feb. 11, 1979" Prepared by I.T. & C.

Exhibit 17: Copy of letter dated Dec. 4, 1979 to Mr. Dompierre from Mr. Lande Re: Submissions to Exhibit 7, "Statement of Allegations"

Exhibit 18: Graph — showing supply and demand curves

Exhibit 6C: Box containing original documents of Exhibit 6

Exhibit 19: Mr. David Schafer's evidence statement

Exhibit 20: Statement of Allegations as suggested by Commission counsel (Rule V(1) (c)) and as amended (as underlined) at the request of counsel for Schafer Bros. Ltd.—Amended Statement of Allegations Dated Jan. 8, 1980

Exhibit 13A: Affidavit of Marcel A.J. Dompierre sworn in Montreal on January 13, 1980 Re: Production of Documents

Exhibit 12A: 3 Volumes (2 grey-covered cerlox 9" x 14" and 1 blue covered cerlox 8½ x 11") Supplementary Relevant Documents Compiled by Commission Counsel Vol. 7, 8 & 9

Exhibit 21: Application dated December 23, 1979 made by counsel for Schafer Bros. Ltd. and Mr. Michel Choquette for the issuance of subpoenas

Exhibit 22: Evidence Statement of Mr. George Schafer Undated

Exhibit 23: Evidence Statement of Mr. Michel Choquette dated January 11, 1980

Exhibit 24: Evidence Statement of Mr. Robert C. Morgan dated December 28, 1979

Exhibit 25: Evidence Statement of Henri Trochu dated December 27, 1979

Exhibit 26: Evidence Statement of Mr. Edward Darby dated December 27, 1979

Exhibit 27: Evidence Statement of Mr. Edward Niemiec dated January 3, 1980

Exhibit 28: Evidence Statement of Mr. John Mohacsí dated December 28, 1979

Exhibit 29: Evidence Statement of Mr. Aloysius Vuk dated January 3, 1980

Exhibit 30: Evidence Statement of Mr. Hector Rodriguez Licea dated December 14, 1979

Exhibit 31: Evidence Statement (Spanish) of Mr. Baltazar Rodriguez Ayala dated December 11, 1979

Exhibit 31A: English Translation of Exhibit 31

Exhibit 32: Evidence Statement of Mr. Giuseppe Rocchi dated December 12, 1979

Exhibit 33: Evidence Statement of Mr. Alejandro Carrillo dated December 14, 1979

Exhibit 34: Evidence Statement of Mr. G. Balint dated January 7, 1980

Exhibit 35: Evidence Statement of Mr. Laszlo Bajor dated January 11, 1980

Exhibit 36: Copy of telex dated April 25, 1977 to Mr. Tudor Price from David Schafer Re: Test Samples Skim Milk Powder

Exhibit 37: Application dated January 18, 1979 by counsel for Schafer Bros. Ltd. and Mr. Michel Choquette Re: Issuance of Subpoenas

Exhibit 38: Legible copies of certain documents which were filed in Exhibits 12 & 12A but were illegible

Exhibit 39: Legible page 1152A of Exhibit 12

Exhibit 40: Legible page 1158A of Exhibit 12

Exhibit 41: Page 1614 as omitted from Exhibit 12A

Exhibit 42: Evidence Statement of Sydney Clifford Barry

Exhibit 43: Evidence Statement of J. Ross Sherk

Exhibit 44: Evidence Statement of Harold Richard Tudor Price

Exhibit 45: Evidence Statement of Lawrence John Marcellus

Exhibit 46: Evidence Statement of Timothy Angus Chisholm

Exhibit 47: Evidence Statement of Walter I. Pelley

Exhibit 48: Evidence Statement of Messrs. Curtis & Ronald Bishop

Exhibit 49: Affidavit of Marcel A.J. Dompierre, Registrar. Sworn Feb. 1, 1980 Re: Public Notices

Annex 24: Annex 24 — List of people attending a traders meeting of the C.D.C. May 13, 1976. To be attached to Exhibit 44 "Evidence Statement of Richard Tudor Price"

Exhibit 50: Copy of letter dated Aug. 5, 1975 to Shamrock, Attn: Antonio S. Isip from David Schafer

Exhibit 12B: Vol. 10 of Exhibit 12, supplementary Relevant Documents compiled by Commission Counsel (pp. 1654 to 1846) 9" x 14" blue-covered cerloxed book

Exhibit 51: Letter dated Jan. 28, 1980 to Mr. Dompierre from Mr. Lande with attachments (List of Questions)

Exhibit 52: Letter dated Jan. 29, 1980 to Mr. Dompierre from Mr. Lande with attachment (List of Questions)

Exhibit 53: Copy of letter dated July 26, 1979 from Algodonera Commercial Mexicano S.A. to St. Lawrence Seeds Ltd. Re: Cancellation of Agreement

Exhibit 54: Letter dated Feb. 7, 1980 from Mr. Lande to M. Dompierre, informing the Commission that clients have no evidence to support Allegations I.A.1(b) (ii) (a) and I.A.1(b) (ii) (b) contained in Exhibit 20

Exhibit 55: Copy of Telex, July 19, 1977 from Schafer Bros. to Mr. Oetalaar Re: Transfer of Letter of Credit

Exhibit 56: Copy of Telex, July 22, 1977 from G. Schafer to L.J. Marcellus Re: Transfer of Letter of Credit

Exhibit 57: Copy of Telex, July 26, 1977 from L.J. Marcellus to Schafer Bros. Re: Transfer of Letter of Credit

Exhibit 58: Copy of Certificate appointing George Schafer a Justice of the Peace

Exhibit 59: Telexes from Schafer to Counsel W.J. Millard dated Apr. 3/62, Apr. 3/62, Jan 17/68, Jan. 21/69 Re: Agent in New Orleans

Exhibit 60: Documents from Nelson Rockefeller, Laurence Rockefeller and Richard Aldrich to Mr. Schafer Re: Expo 67

Exhibit 61: List of questions and excerpt of evidence of George Schafer given on Feb. 8/80 Re: Mexican Monopoly

Exhibit 62: Copy of letter dated Mar. 2, 1964 from Royal Bank to Schafer Bros. Re: Money in bank by Schafer Bros. in 1964 \$225,000.00

Exhibit 63: Copy of letters dated Apr. 24/61 and May 2/61 from David Schafer to Ault Milk Products Ltd. Re: Mr. David Schafer's knowledge as to whether Ault Foods Ltd. and Ault Milk Products Ltd. are the same company

Exhibit A-1, A-2, A-3: Documents mentioned in Mr. David Schafer's Evidence Statement Exhibit 19

Exhibit 64: Copy letter of letter dated April 9, 1969 to Mr. D. Schafer from Mr. Balint Re: Offering of Bank Guarantee to Schafer Bros.

Exhibit 65: Xeroxed copy of book "Standard Methods for the Examination of Dairy Products", 14th Edition, Elmer H. Marth, Ph. D. Editor

Exhibit 6A: November 12, 1976 version of Resumé A (Exhibit 6)

Exhibit 6B: List of discrepancies between Oct. 6/76 Version of Resumé A (Exhibit 6) and Nov. 12/76 Version (Exhibit 6A)

Exhibit 66: Copy of memo from Commission Counsel to all Counsel dated Feb. 25, 1980, Re: Schedule for March 10-14 Hearing

Exhibit 67: Copies of four letters dated Feb. 25/80 from Registrar to Messrs. Newcombe, Grant, Chisholm and Lenhardt regarding documents requested from Schafer Bros. Ltd.

Exhibit 68: Copies of letters in reply to Exhibit 67 from Messrs. Grant, Bruneau and Lenhardt

Exhibit 69: Copy of letter dated Feb. 25/80 with attachment from Registrar to Mr. Lande requesting certain documents

Exhibit 70: Copy of letter dated Feb. 29/80 from Registrar to Mr. L. Atkinson, Former CDC Member, requesting his knowledge and/or information Re: Allegations (Exhibit 20)

Exhibit 71: Copy of letter dated March 4/80 from Registrar to External Affairs, Attn: Mr. G.C. Parks, Legal Advisory Division, with Mexican Interrogatories

Exhibit 72: Paper (bilingual) prepared by R.M.A. Loyns for the Economic Council of Canada entitled "Farm to Food Prices"

Exhibit 73: Copies (French & English) of small booklet entitled "1979-Dairy Facts and Figures at a Glance" published by the Dairy Farmers of Canada

Exhibit 74: Evidence Statement of Mr. Gilles Choquette dated Feb. 21/80. (French original and English translation)

Exhibit 75: Evidence Statement of Mr. Phillippe Pariseau, dated March 4, 1980

Exhibit 76: Evidence Statement of Mr. Samuel G.K. Ault

Exhibit 77: Evidence Statement of Dr. James Angus Elliott

Exhibit 78: Paper prepared by George R. McLaughlin, Commission Advisor, dated March 1980, entitled "The Evolution of Organization and Regulation in the Ontario and Canadian Dairy Industries"

Exhibit 78A: Schedules pertaining to Exhibit 78

Exhibit 79: Copy of letter dated July 2, 1970 from Thos. P. Gonzalez to Ronald A. Chisholm Ltd. responding to offer of 7,000 tons of powder milk

Exhibit 80: Copy of contract (Spanish) CNCP-121/70 between CONASUPO and Ronald A. Chisholm Ltd. July 1970 Re: 7,000 tons of powdered milk

Exhibit 81: Legible page 964 of Exhibit 12, Vol. 5 prepared by Commission staff

Exhibit 82: Letter dated March 6, 1980 from Mr. L. Atkinson to Registrar, in reply to Exhibit 70

Exhibit 83: Evidence Statement of Mr. Jules Gaston Morazain dated Feb. 12, 1980

Exhibit 84: Letter dated March 3, 1980 from David Schafer to M. Dompierre with bundle of documents requested from Schafer Bros. Ltd. et al

Exhibit 85: Memo dated March 7, 1980 from Mr. Lenhardt CDC Counsel, to Registrar, with bundle of documents

Exhibit A-4, 5&6: Documents contained in red-coloured file to be attached to David Schafer's Evidence Statement, Exhibit 19

Exhibit 86: English Translation of pg. 1724, Exhibit 12B, Vol. 10, Telex dated May 5/1969 from Co-op Granby to Mr. A. Benolol

Exhibit 87: English Translation of pg. 1722 of Exhibit 12B, Vol. 10, Telex dated May 5/69 from Co-op Granby to Mr. Benolol

Exhibit 88: Copy of contract (in Spanish) between CONASUPO and Ronald A. Chisholm Ltd. (CNSP 34/69 received H.M. Delvalle Nov. 18, 1969

Exhibit 89: English Translation of pg. 1662, Exh. 12B, Vol. 10, Letter dated Mar. 23/68 to Mr. Benolol from Mr. Licea, CONASUPO

Exhibit 90: English translation of pg. 1664 of Exhibit 12B, Vol. 10, letter dated Jan. 23/68 to Mr. Benolol from Mr. Licea

Exhibit 91: English translation of pg. 1709 of Exh. 12B, Vol. 10, letter dated April 28, 1969 to Mr. Benolol from Mr. Licea

Exhibit 92: English translation of pg. 1723 of Exh. 12B, Vol. 10, telex May 5/60 from Granby Co-op to Mr. Benolol

Exhibit 93: Copy of 2 pages of a survey prepared by US Agricultural Dept. Re: Retail Food Prices in Selected Capitals, Jan. 3/79 and Hours and Minutes Required to Earn Retail Value of Food, Mid-1979

Exhibit 94: English translation of pages 1655, 1658, 1659, 1672, 1676, 1677, 1696, 1702, 1703, 1705, 1736 of Vol. 10 of Exhibit 12B

Exhibit 95: Copy of Memo, dated Oct. 8/77 from Denyse Dignard to Mr. Tudor Price Re: Telegram dated Oct. 13/77 to Dr. Georges R. Schafer

Exhibit 96: Cdn. Exports of Dairy Products 1972-77 CDC Purchases, Sales & Inventory of Skim Milk Powder 1974-79

Exhibit 97: Copy of relevant documents (Telexes and Letters) Re: Schafer sale to Hungary of 1,500 MT of animal feed

Exhibit 98: Copy of telex dated May 3/76 from David Schafer to R. Tudor Price Re: Schafer sale from CDC of 1969 MT Cdn. smp.

Exhibit 99: Memo dated Oct. 10/79 (bilingual) to Commissioners and Section Heads from Gilles Choquette with confidential memo dated June 13/70 from Gilles Choquette to Commissioners and Section Heads Re: Commission of Inquiry

Exhibit 100: Copy of contract (Spanish) #0003-ILP-001/7 between CONASUPO and CDC Re: Sale of 14,000 MT smp

Exhibit 101: Copy of telex dated Feb. 15/77 from Mr. Tudor Price to Mr. John Mills, Commercial Counsellor Cdn. Embassy, Mexico City Re: smp to CONASUPO

Exhibit 102: Copy of telex dated Feb. 17/77 from Mexico ITCOTT WHB Re: CONASUPO

Exhibit 103: Copy of confidential memo dated Mar. 17/77 from R. Tudor Price Re: Mexico

Exhibit 104: Questions of Mr. Lande to Mr Tudor Price Re: Application under Sect. 41(2) Federal Court Act

Exhibit 105: Questions of Mr. Wilson to Mr. Tudor Price Re: Application under Sect. 41(2) Federal Court Act

Exhibit 106: Questions of Mr. Wilson to Mr. Hunt Re: Application Under Sect. 41(2) Federal Court Act

Exhibit 107: Affidavit of Mark MacGuigan, Secretary of State for External Affairs, sworn March 13, 1980, made pursuant to Sect. 41(2) of the F.C. Act

Exhibit 108: Letters dated from Oct. 1977 to Dec. 24/79 Re: Appointments to the Consultative Committee to CDC

Exhibit 109: Report of Special Committee of the Consultative Committee, dated Nov. 11/76 Re: Role of the Consultative Committee

Exhibit 110: Copy of letter dated Apr. 1/77 from B.H. Nordermann, General Manager Intercontinental de Mexico, S.A. to Ault Foods Ltd. Re: Appointment of Agent

Exhibit 111: Copy of handwritten note dated Dec. 9/75 of Mr. Tudor Price Re: Discussion with Canada Packers

Exhibit 112: Second Affidavit of Mark MacGuigan, Secretary of State for External Affairs, sworn March 14/80 made pursuant to Sect. 41(2) of the Federal Court Act

Exhibit 113: Order of Mr. Justice Gibson, Commissioner, Re: Application made pursuant to Sect. 41(2) of the Federal Court Act

Exhibit 114: Pertinent documents re: Calling Mr. E. Powers former CDC member as a witness before this Commission of Inquiry

Exhibit 115: Memo dated Mar. 13/80 from Commission Counsel to All Other Counsel Re: Written Submissions

Exhibit 116: Public Notice for Hearing, dated May 5, 1980

Exhibit 117: Letter dated Feb. 19, 1980, from Mr. Lande, withdrawing as counsel for Schafer Bros. Ltd.

Exhibit 118: Appearance of Mr. Schwisberg as one of the attorneys for Schafer Bros. Ltd., dated March 7, 1980

Exhibit 119: Submission of Mr. Lande on behalf of Schafer Bros. Ltd., received April 1, 1980

Exhibit 120: Joint submission by counsel for CDC, Mr. Tudor Price, Mr. Marcellus & Ronald A. Chisholm Ltd., received April 21, 1980

Exhibit 120A: Copy of letter of correction to joint submission (Exh. 120), dated May 5, 1980, from Mr. Lenhardt, counsel for CDC

Exhibit 120B: Letter of correction, dated April 30, 1980, from Mr. Chisholm, Re: Exh. 120

Exhibit 121: Submission by Mr. Newcombe, counsel for Mr. Tudor Price, received April 21, 1980

Exhibit 122: Submission by Mr. Grant, counsel for Mr. Marcellus, received April 21, 1980

Exhibit 123: Submission of Mr. Grant, counsel for Mr. Marcellus, Re: Costs, received April 21, 1980

Exhibit 123A: Letter dated May 8, 1980, from Mr. Grant, Re: submission for costs (Exh. 123)

Exhibit 124: Supplementary submission of Mr. Chisholm, counsel for Ronald A. Chisholm Ltd., received April 24, 1980

Exhibit 125: Submission of Mr. Chadwick counsel for Ault Foods Ltd., received April 22, 1980

Exhibit 126: Supplementary submission to Mr. Lande (Exh. 119) by Mr. Schwisberg, counsel for Schafer Bros. Ltd., received April 24, 1980

Exhibit 127: Submission by Mr. Lenhardt, counsel for CDC, in response to R.A. Chisholm Ltd., Mr. Marcellus and Mr. Schwisberg, received May 12, 1980

Exhibit 128: Supplementary joint submission of counsel for CDC, Mr. Tudor Price, Mr. Marcellus and Ronald A. Chisholm Ltd., received May 12, 1980

Exhibit 129: Letter dated May 8, 1980, from Mr. Schwisberg requesting an extension of time to file further submission

Exhibit 130: Letter dated May 15, 1980, to Mr. Schwisberg from the Registrar, Re: granting extension requested in Exh. 129

Exhibit 131: Memorandum dated Feb. 4, 1980, from Commission counsel to counsel for CDC, Re: general export subsidy information

Exhibit 132: Memorandum dated Feb. 19, 1980, from CDC counsel to Commission counsel in response to Exh. 131

Exhibit 133: Letter dated Feb. 26, 1980, from CDC counsel to Registrar, enclosing partial information on subsidies

Exhibit 134: Copy of letter dated May 2, 1980, from Registrar to CDC counsel requesting the further reply promised re: subsidies

Exhibit 135: Letter dated May 5, 1980, from counsel for CDC to Registrar, enclosing further information Re: subsidies (also Exh. 120A)

Exhibit 136: Copy of letter dated May 15, 1980, to counsel for CDC from Registrar, requesting more comprehensive information Re: subsidies

Exhibit 137: Letter dated April 14, 1980, from Mr. David Schafer, advising of error in transcript

Exhibit 138: Copy of letter dated March 17, 1980, from Mr. Lande to Mr. G. Schafer, Re: Undertaking to produce doctoral degree from U.C.L.A.

Exhibit 139: Letter dated April 14, 1980, from G. Schafer to Registrar, responding to Mr. Lande's letter, Exh. 138, with enclosure

Exhibit 140: Copy of letter dated May 2, 1980, from Registrar to Mr. Schwisberg, requesting comments Re: Exhibit 139

Exhibit 141: Copy of letter dated May 2, 1980, from Registrar to Mr. Lande, requesting comments Re: Exh. 139

Exhibit 142: Letter dated May 7, 1980, from Mr. Lande to Registrar in response to Exhibit 141

Exhibit 143: Letter, in French language, dated March 18, 1980, to Registrar from Mr. Bruneau, Re: Exhibit 88

Exhibit 144: Booklet entitled "National Dairy Program 1978/79"

Exhibit 145: Booklet entitled "National Dairy Program 1979/80"

Exhibit 146: Letter dated April 8, 1980, to Commissioner, from Mr. Pariseault, enclosing two papers entitled "Production and disposal of skim milk powder", and "Brief comments of the Canadian Dairy Industry"

Exhibit 147: Copy of telex dated July 30, 1975, to Havana, Re: Sales of skim milk powder to Cuba

Exhibit 148: Copy of telex dated August 12, 1975, from Havana (edited), Re: SMP Cuba

Exhibit 149: Copy of telex dated August 12, 1975, to CANMISEUR from EXTOTT, Re: sales of SMP

Exhibit 150: Copy of telex dated August 21, 1975, to CANMISEUR Re: S.M.P.

Exhibit 151: Copy of telex dated march 22, 1976, from CANMISEUR to EXTOTT, Re: S.M.P. exports to Cuba & Mexico

Exhibit 152: Copy of telex dated March 26, 1976, from Geneva to EXTOTT, Re: S.M.P. arrangement

Exhibit 153: Letter dated April 18, 1980, from Dr. Georges R. Schafer to Registrar with copy of telex to CDC Chairman, dated Apr. 18/80, Re: no response to his inquiries made to CDC

Exhibit 154: Copy of telex dated April 22, 1980, to Mr. Schafer from CDC Chairman, replying to telex attached to Exhibit 153

Exhibit 155: Letter dated March 31, 1980, to Registrar from Mr. Lande, requesting further information

Exhibit 156: Copy of letter dated May 14, 1980, to counsel for CDC from Registrar, requesting further information

Exhibit 157: Letter with attachment dated May 23, 1980, to Registrar from CDC counsel, replying to Exhibit 156

Exhibit 158: Copy of letter dated May 15, 1980, from Registrar to Canada Packers Ltd., requesting information

Exhibit 158A: Letter dated May 27, 1980, to Registrar from Canadian Packers Ltd. replying to Exhibit 158

Exhibit 159: Copy of memorandum dated May 16/80, to all counsel from Commission counsel, Re: May 28, 29, 30, 1980 hearings

Exhibit 160: Copy of letter dated May 16, 1980, to CDC counsel from Registrar, regarding production of witnesses

Exhibit 161: Copy of letter dated May 23, 1980, to CDC counsel from Registrar, requesting CDC Chairman be made available to testify at the hearing commencing May 26, 1980

Exhibit 162: Memorandum dated May 27, 1980, from Commission counsel, Re: status of Mexican witnesses and interrogatories

Exhibit 163: Copy of letter dated April 17, 1980, from Registrar to Mr. Schwisberg, requesting status of Exhibits 21, 37, 51 and 52

Exhibit 164: Copy of letter dated May 14, 1980, from Registrar to Mr. Schwisberg, asking for reply to Exhibit 163, and asking his position regarding questions to Messrs. Chisholm, Pelley and Hunt

Exhibit 165: Paper dated May 28, 1980, prepared by Mr. Tudor Price, entitled "C.D.C. pricing for Export of Skimmed Milk Powder October 1975 — December 1977"

Exhibit 166: Notice of hearing, dated June 5, 1980

Exhibit 167: Letter dated May 23, 1980, from Canadian Embassy in Mexico to Mr. Bruce McDonald, Re: status of inquiries made of Mexican witnesses with answers provided by Mr. G. Rocchi

Exhibit 168: Letter dated June 3, 1980, from Mr. W. Lenhardt to Registrar, advising this Commission that as of July 2, 1980, he will be withdrawing as assistant counsel to CDC

Exhibit 169: Copy of letter dated June 3, 1980, from Registrar to Mr. Bruneau, requesting clarification Re: Exh. 88

Exhibit 170: Letter dated June 19, 1980, from Mr. Bruneau in reply to Exhibit 169

Exhibit 171: Copy of letter dated June 3, 1980, from Registrar to Chemical Bank of New York, requesting information Re: Exhibit 12A, page 1223

Exhibit 172: Letter dated June 5, 1980, from David Schafer to Commission of Inquiry, Re: status and weight of the Evidence Statement signed by Mexican nationals

Exhibit 173: Letter dated June 10, 1980, from Mr. Lenhardt to the Commission of Inquiry, Re: further documents located

Exhibit 174: Copy of memo dated April 22, 1977, prepared by Mr. J.R. Midwinter, Re: CDC and Mexico

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Exhibit 180: Affidavit of Mr. Denis Diotte, sworn June 23, 1980, Re: serving subpoena on CDC

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Exhibit 183: Letter dated June 20, 1980, from Mr. Schwisberg, enclosing written submission in response to joint submission (Exh. 128), and also submission made on behalf of Ronald A. Chisholm Ltd. and Mr. Marcellus

Exhibit 184: Copy of memo dated June 26, 1980, from Registrar to Messrs. Schwisberg, Chisholm, Bruneau, Grant, Newcombe, Chadwick & Schafer Bros. Ltd., Re: confirmation of July 2 hearing and further submission

Exhibit 185: Letter dated June 26, 1980, from Mr. Bruneau to Registrar, requesting adjournment of July 2 hearing

Exhibit 186: Copy of letter dated June 26, 1980, from Mr. McDonald to Mr. Bruneau, advising that the hearing of July 2 will take place as scheduled

Exhibit 187: Letter dated June 30, 1980, from Mr. Bruneau to the Commissioner (original in French, and English transl.), advising that because his request for postponement of July 2 hearing was denied and for other reasons, he is withdrawing as counsel for CDC

Exhibit 174A: Copy of memo dated April 22, 1977, prepared by Mr. Midwinter, Re: CDC agency arrangement in Mexico

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Exhibit 192: Submission of J.B. Chadwick on behalf of Ault Foods, dated August 1, 1980

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Exhibit 196: Submission of D.G. Grant on behalf of L.J. Marcellus, dated August 5, 1980

Exhibit 197: Submission of W.A.J. Lenhardt on behalf of the Canadian Dairy Commission, dated August 5, 1980

Exhibit 198: Memorandum dated September 5, 1980, from Registrar to all counsel and other interested parties, advising of exhibit numbers for documents received by the Commission of Inquiry, dated September 5, 1980 (Nos. 189A through 197)

Exhibit 199: Letter dated October 29, 1980, from Registrar to all Counsel and interested parties, reporting on the interviews held in Mexico City on October 16 and 17, 1980

Exhibit 200: Letter dated September 24, 1980, from Registrar to all Counsel and interested parties, Re: Meetings in Mexico-City on October 16 and 17, 1980

Exhibit 201: Letters, dated September 18, 1980, inviting all Mexican witnesses to attend interviews to be held in Mexico City on October 16 and 17, 1980

Exhibit 202: Written submission by Michel Choquette on behalf of Schafer Bros. Ltd., dated November 3, 1980

Exhibit 203: Letter from Mr. R.J. Edington, Canada's Consul to Mexico, dated November 6, 1980, Re: the Embassy's assistance in contacting the Mexican witnesses and organizing the interviews on October 16 and 17, 1980

APPENDIX 11

TOPICAL CONSIDERATION OF THE EVIDENCE

In assessing each of the allegations made by Schafer Bros. Ltd. and Michel Choquette, and in considering each of the issues raised by the said allegations, all of which allegations and issues are set out in Appendices 5 and 6 respectively to this Report, regard was had to each relevant part of the evidence.

In virtually all instances, and especially where the allegation or issue was of a general nature, relevant evidence appears at so many different places throughout the 27 volumes of testimony, and at such a number of the thousands of pages of documents filed as exhibits, that it is not practicable to seek to list the locations in the record of all the evidence relevant to each allegation and issue.

Anyone wishing to review such evidence in fuller detail than has been expressly referred to in the Report, should have reference to all of such evidence and to the Registrar's Record and Minutes of Hearings.

APPENDIX 12

Commission of Inquiry into Certain
Allegations Concerning Commercial
Practices of the Canadian Dairy Commission

AN OUTLINE OF SOME OF THE ECONOMIC ASPECTS OF THE INQUIRY

Dr. L. A. Skeoch

November, 1979

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1. Introduction

The objectives of the Canadian Dairy Commission are set out in very broad terms in section 8 of the Canadian Dairy Commission Act as being:

"...to provide efficient producers of milk and cream with the opportunity of obtaining a fair return for their labour and investment and to provide consumers of dairy products with a continuous and adequate supply of dairy products of high quality."

The powers conferred upon the Canadian Dairy Commission (under section 9) are both broad and comprehensive, and include, among others, the power to

- "(a) purchase any dairy product and package, process, store, ship, insure, import, export, or sell or otherwise dispose of any dairy product purchased by it;
- (b) make payments for the benefit of producers of milk and cream for the purpose of stabilizing the price of those products...;
- (c) make investigations into any matter relating to the production, processing or marketing of any dairy product, including the cost of producing, processing or marketing that product."

On the surface, the listed objectives might appear to merit support but, surely, they must be made more specific to be meaningful.

Concepts such as "efficient production", "fair return", and "adequate supply" are essentially long-run in nature and are incapable of meaningful definition apart from a market context which takes account of broad domestic and international economic influences and pressures. Government policy with respect to agriculture appears, however, to assume that the time-scale is unimportant, that innovation and dynamic change can be largely left to take care of themselves, and that its major focus should be limited to achieving some defensible level of "government-guaranteed profitability."

As I have argued elsewhere, in dealing with agriculture it is important that we do not take as a basis for our analysis an oversimplified version of the processes of adjustment in a price-directed market economy. Adjustments in demand and in supply in response to changes in price, which would

give agricultural producers an income roughly equal to workers of equal skill in other sectors of the economy, encounter serious elements of friction on the score of mobility of factors, of high instability of prices, and of inelasticities and demand interactions on the consumption side, which make medium-term equilibrium a difficult objective to attain. A political element is also inevitably added in both the domestic sector and the export sector which for non-economic reasons postpones or prevents the process of adjustment from taking place.

In the agriculture and food sector of the economy, the best interests of consumers and producers would in simple terms require that:

- (1) the product be produced as efficiently as possible, in the short and in the long term;
- (2) that the costs of selling, of transportation and of handling be reduced to the minimum levels attainable;
- (3) that, given the conditions of market demand (i.e., available substitutes, competing sources of supply of the same product, etc.), the best selling price is secured. The consumer is entitled to the protection of these alternatives; the producer is entitled to the best efforts of the sellers to obtain the highest price in the market circumstances.

Producers and consumers can reasonably demand that processors, shippers, and distributors not only carry out their functions with maximum allocative efficiency but that they should also be put under pressure to be aggressively innovative.

These broad objectives would appear to assure a fairly straightforward and important role for combines policy. For a variety of reasons this prescription cannot be taken at face value. First, there is a myriad of agricultural assistance programs, federal and provincial, the net impact of which is almost impossible to appraise. Some are apparently designed to promote adjustment and change, others to hinder them. Some have differential regional impacts — and are maintained long after their original purpose has been served — if that can even be identified in some cases.

The regulatory process — that most infelicitous experiment in public policy — has intervened in the process of adjustment in ways impossible to weigh or measure, and so we could go on. The point is that attempting to impose a competitive regime in such settings cannot always produce predictable results. What we perhaps need first of all is an analysis of the changes required to rationalize the food and agriculture industry.

Basic to the whole analysis is a determination that there are no conflicts between the ends specified and the means provided to accomplish those ends. As Professor G.H. Gilson has remarked:

"Production control may be an effective way of raising farm prices but such a policy may be in serious conflict with the goal of efficiency in agricultural production."

[Evaluation of Objectives for Agriculture, Agricultural Economics Research Council of Canada, Publication No. 12, p. 24.]

On the same issue, Professor R. Schickele has observed:

"The relationship between the means and the end is a crucial issue in policy appraisal. The purpose of the policy may be fine, but, if the measures applied are inappropriate, the whole program may be a failure. When we criticize a public policy, we should make clear whether we criticize its purpose or the way it goes about to serve its purpose...Many a good objective has been discredited on account of poor measures employed to meet it. Our experiences with price-support programs, with farm-debt relief, with conservation programs, yield ample illustrations."

[Agricultural Policy. McGraw-Hill, 1954, p. 66. Quoted in Gilson, op.cit.]

It is not the purpose of the present paper to analyze the performance over time of the Canadian dairy industry. It is appropriate, however, to note that a number of recent studies by competent scholars and agencies have expressed serious doubts about the level of efficiency of the industry and the wisdom of the price policies adopted.

For example, L. Auer in his study, Canadian Agricultural Productivity (Economic Council of Canada, 1970), pointed out that yield levels in Canadian livestock production, although still well below U.S. levels, were showing improvement and there was some narrowing of the gap. "In the dairy field, the developments are less favourable for Canada. In the early postwar years, milk production per cow was about 15 percent below the U.S. level, but in more recent years it has been closer to 25 percent below the U.S. level." A similar gap, it should be noted, holds for the gap between Britain and Canada.

The Centre for the Study of Inflation and Productivity reported in The Monitor, Vol. 1, No. 2, Feb. 1979, under the title "The Dairy Industry: A Case Study of Economic Inefficiency" the results of a study of the operations of the Canadian Dairy Commission. Its evaluation of the means employed by the Commission (and, in certain respects, of its interpretation of the ends specified in the Canadian Dairy Commission Act) was overwhelmingly critical. One of their central criticisms focussed on the impact of Canadian Dairy Commission policies on market effectiveness.

"The masking of market signals inherent in current dairy pricing and support policies is in danger of inhibiting the continued development of a more efficient industry and is doing so at substantial economic cost to farmers and taxpayers alike."

A Report on Consumer Interest in Marketing Boards prepared for the Consumer Research Council (Ottawa, 1974), questioned "whether the apparent current objectives and programs of the Canadian Dairy Commission are appropriate in the longrun" on a number of grounds, among them the argument that "support at the manufactured product level may lead to unintended benefits to processors."

To determine whether the analysis and the strictures of these studies are warranted, in whole or in part, is not the purpose of this paper. Rather, it will be concerned with the question whether there are not less interventionist and less restrictive practices which can be used to achieve a higher

level of market effectiveness — especially in the longrun — and at the same time achieve the broad purposes of the legislation as set out in section 8. The major issues which will be examined are:

- (1) how to assure adequate accountability;
- (2) the criteria to be used for price discrimination;
- (3) the consequences of adopting a high-price line rather than a low-price line;
- (4) the issues involved in attempting to obtain "a fair return for their (dairymen's) labour and investment" by a domestic support price above "world levels";
- (5) the nature of appropriate commodity exchange practices.

Before undertaking an analysis of any area of agricultural regulatory policy, one is well advised to read the cautionary comment of the U.S. Justice Department's "Report of the Task Force on Antitrust Immunities":

"Federal agricultural regulation is one of the most complex regulatory schemes the mind of man has yet devised. Aimed at such diverse goals as assuring an adequate supply of milk, raising producer income, achieving and maintaining orderly marketing conditions, and preventing excessive price levels, the agricultural regulatory programs have generated a maze of complex rules and regulations almost impenetrable by intelligent laymen."

These words are fully as relevant for Canada as for the United States. Indeed, if anyone believes that there is some trick of formula, technique or administration that will "solve" the problems of agricultural adjustment, he is more likely to be a menace than a contributor to progress in this field.

The unavoidable reality is that outside an effective dynamic market economy, our society has no way to deter or penalize the wasteful use of resources, to compel technological innovation, or to direct production toward the satisfaction of consumer wants. Indeed, without competitive challenge, or the threat of such challenge, we cannot even measure waste, inefficiency, or technological stagnation. Barring international comparison, there is no standard by which to compare actual performance and possible performance.

Nevertheless, policy must move into the area of agricultural adjustment with one eye on dynamic change and the other on a "reasonable" level of stability.

It is basic to the policy area with which we are concerned that the conditions for easy and successful adjustment to changing economic circumstances are rarely encountered in agriculture. The decision whether to increase the output of a particular type of crop (or other product) is one which, in the nature of things, is likely to be taken by producers at much the same time. Given their large number, and in the absence of collusion, the transmission interval will be as long as the production period for the crop in question. Demand will frequently be inelastic, supply may be inflexible and storage possible only at heavy cost. To these factors may be added the disturbance introduced by the weather, and it follows that there is likely to be an inefficient adaptation of supply to changes in technology, new

products and demand conditions in general. Some sort of assistance to reduce fluctuations may often be required, whether it takes the form of government assistance, vertical integration, or a variety of other arrangements. The central issue is to reconcile the real needs of information to guide the adjustment and expansionary processes with market discipline and efficient selection.

The first task will consist in improving information. In a market economy, this is done essentially by the price system. Indeed, the market is a marvelously efficient mechanism. The formal collection of market information by survey methods, and the like, is a pale and ineffective substitute. The market-induced search by thousands of individual minds for maximum efficiency, for opportunities for experimentation and innovation, creates a productive and optimizing effect of great force. At the same time, market-oriented dynamic change in all its manifold and unpredictable dimensions does create short-run problems — but it continues to be our chief means of increasing real national product per capita.

Unfortunately, the response to these short-run problems too frequently takes the form of defence of the *status quo* through the entrenchment of existing interests. As L.L. Bogen has put it:

“We operate programs in the short-run as a practical matter, but the fear is, as Kenneth Boulding once rather facetiously stated, that the addition of the short-run doesn’t add to the long-run, rather it leads to utter destruction.”

(“Trading Problems in International Markets.” *Journal of Farm Economics*, Vol XL, No. 5, Dec. 1958, p. 1755.)

Instead of confronting the difficult problems of bridging the short-run, long-run transition, the short-run is perpetuated by sterile regulations that avoid dynamic change. Rather than adjusting to the market, administrators attempt to create their own “market information” by imposing quotas on producers and consumers by arbitrary allocation devices buttressed by multiple-price systems of doubtful validity in terms of defensible price discrimination criteria, by deriving prices from a cost-justification base frequently determined by formula rather than from the pressure of market forces, and the like. Controls spread vertically and horizontally in order to avoid pressures that could challenge the *status quo*. Instead of devising incentives to adapt, “direct-and-control” methods are too often adopted to support a form of security based on the inhibition of change.

2. Government Intervention in the Canadian Dairy Industry

In Canada there are two different (but related) milk markets supplied by three categories of farmers. One market is that for fluid milk (beverage milk and fresh cream); the other is for milk used for industrial purposes (butter, cheese, ice cream, etc.). Producers of fluid milk are licensed and regulated by provincial milk marketing boards which establish prices, administer production quotas, and enforce sanitary regulations. The industrial milk market is supplied by cream producers, industrial milk producers, and by fluid milk (surplus) producers.

The industrial milk market is regulated by a federal agency, the Canadian Dairy Commission, which sets milk prices, supports the prices of butter and skim milk powder, administers producer quotas with the cooperation of the provincial milk marketing boards (for further discussion of this arrangement see Appendix “A”), and also distributes federal subsidies to producers. The Canadian Dairy Commission also carries out several marketing and trade functions: it is the sole importer of butter, regulates cheese imports, buys and exports skim milk powder (and, on occasion, butter and other milk products) which is in excess of domestic market requirements and collects levies from producers to assist in subsidizing these exports.

The marketing of fluid milk is controlled by provincial milk boards in every province except Newfoundland. These boards operate fluid milk quota programs and, in most cases, set the administered prices for fluid milk. The restriction of entry of non-quota holders into the fluid milk market makes possible a system of discriminatory pricing for fluid as against industrial milk which provides higher prices for the former group. These discriminatory controls create quota values which have consequences for the movement of resources, for investment valuation, and for producer management initiative that are difficult to quantify and appraise. The administered pricing of fluid milk is also carried out in some provinces under a system of resale price maintenance. Where such a practice prevails it tends to reinforce the protection of the processing and distributing sectors (often combined in single multi-product firms) which results from the marketing and trade functions of the Canadian Dairy Commission.

3. Types and Degrees of Intervention in Relation to Successful Adaptation, Efficient Selection of Entrepreneurs, and Market Discipline.

(a) Assuring Adequate Accountability

Although the legislation does not impose a specific accountability requirement, it does, by the use of the expressions “efficient producers”, “fair return” and “adequate supply”, implicitly impose some requirement of market effectiveness. The failure to include any reference to long-run market-price levels does, however, raise some doubts. Nevertheless, the references to the other dimensions of performance are essentially long-run in nature and are incapable of meaningful definition apart from a market context which takes account of broad domestic and international economic influences and pressures.

It should be emphasized at the outset that a “cost justification” basis for prices and returns is static and retrospective in effect and in no sense provides a defensible standard of accountability.

(Note: the issue of cost justification and economic behaviour is explored at some length in the report, *Dynamic Change and Accountability in a Canadian Market Economy*, Ottawa, 1976, pp. 260-276. It is probably unnecessary to repeat here the substance of that analysis, but the concluding paragraph of the chapter may merit quotation:

“On the whole, we conclude that a short-run cost justification approach to price determination, whether adopted by private groups independently or with the sanction of public authority, is inimical

to the operation of a market system and, in a broader sense, is inconsistent with the operation of a dynamic, flexible economy. Not only does it lend support to established cost-price relationships but it tends to pass on in pre-ordained fashion any cost increases instead of having the shifting stresses of the market bring pressure to bear to modify such increases. The short-run cost-justification approach weakens the forces working for the introduction of new technology and new forms of business organization; it weakens the role of prices and profit in allocating resources, and places the emphasis on direct intervention to shift resources. By insulating substantial sectors of the economy from market pressures, it concentrates the burden of adjustment arising from economic change — and change does still go on in some sectors of the economy and in some areas of the world — on the remaining shrinking area of the economy occupied by the market-oriented industries.”)

What is needed is a broader and more market-oriented approach to accountability. The points in time at which accountability may be enforced are several. There is an *ex ante* measure when investment programmes are under consideration. The price structure should be designed to encourage adjustment to new technological and organizational developments, to new processes and substitute products, and the like, which may be discerned in the future. In other words, it is necessary for predictive purposes to incorporate some realistic measures of changes in the state of the arts. Such new dairy products as ultra high temperature milk which can be stored without refrigeration for a 60-day shelf life, if widely accepted, will obviously have a major impact on adjustments to the seasonal milk production pattern. Another competitive influence of importance may be found in the new “vegetable milk” product that is apparently more than a technical possibility. The time-response of milk production also appears to be changing. John R. King has reported that:

“(1) The supply elasticity of milk production in the short run appears to have been in the range of .15 to .30. Estimates of longer-run elasticity indicate it to be in the range of .35 to .50. (2) Producer response is occurring at a more rapid rate in recent years, so that long-run adjustments are not as long as they used to be. These findings should be of value, if utilized by those responsible for determining agricultural policy.”

(“The Response of Milk Production to Price,” *Journal of Farm Economics*, Vol. XL, No. 5, 1958, p. 1114.)

These considerations require the adoption of reproduction cost analysis based on the best prospective practices.

There is also an *ex post* check for accountability in the form of an audit of accounts. This check has a double purpose: to see if the anticipated results of the *ex ante* projection have been realized, and to determine whether a subsidy may cease to be necessary, or an investment no longer risky.

The periodicity of the accountability review may be long or short. At one extreme there may be a long-term review

(every five or six years?) of prospective new developments and of how the industry may be induced, and pressured, to adjust to these new conditions. There may be annual reviews of operating budgets and of the effectiveness of the transitional programme.

One thing to avoid is the tendency to look for “gaps” in the controls and to demand that they should be filled. Were no gaps left, there would be no flexibility. It is necessary to remember that a market economy has its untidy and mutable elements but that, over time, it has proven to be an effective guide to decades of prodigious economic growth. The special problems of the agricultural sector require a judicious selection of appropriate accountability devices to facilitate and promote broad, dynamic change and not to avoid the necessity for such change.

(b) Criteria for Price Discrimination

Discriminatory pricing practices and the restraints that permit or support them are basic elements in the federal and provincial dairy marketing programmes. It should be pointed out, in advance, that the term “price discrimination” encompasses a variety of types of market behaviour, and that the consequences will vary with the type of discrimination and with the circumstances in which it is employed.

In general, price discrimination may be defined roughly as:

- (1) variations in the price of the same product sold under similar conditions to different purchasers;
- (2) uniform prices charged different purchases for product-services that are not the same;
- (3) different prices to different purchasers for different varieties of the same product (or of various technically similar products) if the price differences are not the same as or proportional to the differences in their (long-run) costs of production.

This definition can also be applied, *mutatis mutandis*, to price discrimination on the part of buyers. It is important to keep this two-fold definition in mind, as the Canadian Dairy Commission, being a monopsonist-monopolist, engages in price discrimination on both sides of the market.

No attempt will be made to review in detail all the concepts and issues involved in the economic analysis of price discrimination*, however, the major strategic aspects of the practice require brief reference.

The primary prerequisite of price discrimination is, of course, that there should be the power to discriminate, and this power rests upon some element of market imperfection. Sellers (buyers) must enjoy some degree of market power to practice price discrimination, although there need not be “substantial” control, far less anything approaching a position of monopoly (monopsony). Absence of (or imperfect) knowledge of the terms and conditions on which sales are being made in the market, product differentiation, fewness of sellers (buyers), and the like, all would make it possible to practice price discrimination.

* A relatively brief discussion which avoids much of the technical jargon can be found in the author's *Discriminatory Pricing Practices in the Grocery Trade* (Queen's Printer, 1958), Chapter II.

Assuming the power to discriminate, it will be advantageous to do so when the market for the product can be separated into parts, or customers can be segregated, so that the seller can increase his profits by charging different prices in the different sub-markets. If the elasticities of demand (a measure of the change in the amount purchased in response to a change in the price) in the various sub-markets are almost the same at relevant prices, then discrimination is without any point. Even where the elasticities are different, the seller must be able to prevent the re-transfer of goods from the lower-priced market to the higher-priced market and he must be able to do so at a cost that is not so great as to offset the gain from discrimination. He must also be able to prevent elements of demand from shifting from one sub-market to another.

The first condition (different elasticities) is probably fairly common; the condition of non-transferability of supply and demand is less frequently met with. Where there is a genuine sole-seller (monopolist) or sole-buyer (monopsonist), particularly one endowed with governmental authority to impose conditions creating sub-markets, the scope and effectiveness of price discrimination is obviously substantially increased.

The discriminating seller will then charge a relatively high price in the sub-market in which demand is less elastic and a lower price in the sub-market in which demand is more elastic, thereby increasing his profit above the level which it would reach if he sold his product at a single price.

The precise technical conditions under which the seller will maximize his profit can be summarized briefly by saying that the marginal revenue (roughly, the addition to total revenue from the sale of an added unit) in each separable market must be equal (although because of the different elasticities of demand, the relation between marginal revenue and price will be different in each sub-market), otherwise it would pay to shift units from one sub-market to another. In addition, the common marginal revenue must equal marginal cost.

These principles are the ones that apply to what is called "third-degree discrimination" — and it is these that are most commonly considered to be relevant to the analysis of price discrimination. In addition, there is "perfect discrimination" (also called "first-degree discrimination") under which the seller attempts to sell each unit at the highest price the buyer will pay, with a different price for each such unit. Such systems are rarely encountered, although some public utility pricing systems which charge a high price for the first "block" of power used, a lower price for the second "block", and so on, constitute an approximation to perfect discrimination. There is also "chaotic discrimination" which takes a number of forms, such as secret price cuts to some buyers, while others are charged the published list price.

Other categories involve discrimination between products or uses of a product, spatial discrimination (both of which are used by the Canadian Dairy Commission), discrimination on a time basis (e.g. telephone rates), personal discrimination (usually kept secret), and still others.

The major question about price discrimination relates to its effects on major aspects of economic performance. The three dimensions of basic importance are its effects on the

allocation of resources, on productive efficiency and on income distribution.

With reference to the first, the basic issue concerns the relative quantities in which various goods are produced and what constitutes the best ratio from the standpoint of buyer satisfaction. Where there are both monopolistic and monopsonistic elements, reinforced by third-degree discriminatory pricing — as in the case of the regulated dairy industry — and especially where a variety of products is involved (such as butter, cheese, skim milk powder, fluid milk), it becomes extremely difficult to predict the ratio of price to marginal cost for the different product industries. Where the same product is sold in different sub-markets at different prices, we can say in terms of aggregate welfare that the sub-market with an elastic demand will be charged lower prices and "too large" a share of resources will be devoted to supplying it, whilst the sub-market having an inelastic demand will be charged higher prices and "too small" a share of resources will be devoted to supplying it. (Cf., Joe S. Bain, *Price Theory*, pp. 413-414.)

Available information does not permit an assessment of the nature and extent of the impact of Canadian Dairy Commission policies on the allocation of resources, particularly in view of the high-price line adopted. There are, nevertheless, a few comments of a general nature that should be made.

Control of the supply of processing-distributing services is an element of major importance in examining the allocation-of-resources issue. To take the example used by Professor W.H. Nicholls, market power in the cheese industry may be fairly well limited by the competition of other uses for the raw milk, but if large dairy processing firms handle a major proportion of all alternative uses of milk, this raises a serious question as to the effectiveness of inter-product competition for the use of our agricultural resources in protecting farmers and consumers from elements of market power in the processing-distributing industries.

Nicholls comes to a rather pessimistic conclusion on this subject:

"Regulatory agencies have all too often pacified distributor and producer groups by authorizing a further increase in the price to producers and in dealers' margins at the expense of a higher price to the unorganized consumer...Thus, it is the milk consumer that pays, receiving in return the somewhat doubtful benefits of a 'stable' rather than a potentially 'chaotic' market."

(*Imperfect Competition within Agricultural Industries*, pp. 195, 196)

In view of the increasing concentration in the Canadian dairy processing-distributing industry, the possibility that stability and "pacification" may be purchased at too high a price cannot be ignored.

The issue of the impact of price discrimination on productive efficiency relates to the question whether such discrimination promotes the achievement of economies of scale from the technological and organizational points of view, and also, less commonly, whether price discrimination assists in the development of innovations. These are difficult questions to explore since much depends on the time

allowed for variations in output to take place. A period long enough to give sufficient observations to be persuasive, is almost certain to involve significant changes in the technique of production. Yet information of this sort becomes more vital as public regulatory and support programmes are extended to ever-widening sectors of agriculture. Hence the importance of *ex ante* accountability.

Finally, we should be know something about the impact of price discrimination on income distribution. It is generally conceded that where there are few firms, as in monopolistic, oligopsonistic or monopsonistic market structures, and where price discrimination is practiced, excess profits tend to emerge and to be maintained so far as barriers to entry exist and depending upon the magnitude of such barriers. Where the barriers derive from government intervention, the persistence of the excess profits, perhaps disguised by cost-justification calculations, is difficult to identify and more difficult to eliminate.

It should be added that some economists suggest that the excess profits (and thus worsened income distribution) arising from discrimination provide an incentive to greater efficiency, to a higher level of investment and to more vigorous pursuit of new techniques. Analysis of such relationships must be tailored to the individual case.

So far, we have made only limited progress in devising analytical techniques that are precise or accurate enough to provide a conclusive picture of the social and sectional benefits and costs of price discrimination in the sale of farm products, generally. In particular, we cannot distinguish between the impact on "rich" and "poor" consumers, a type of knowledge that is necessary about any publicly-supported programme.

It is obvious from the issues raised in this section that many basic questions about the impact of price discrimination on producers and consumers remain unexplored, in part because they are not perceived as vital issues, in part because the techniques needed for their analysis are not easily available. This suggests that tests of market effectiveness should take the place of unproved or unpredictable discrimination policies wherever possible. This is particularly true in the case of the Canadian Dairy Commission, since it acts as monopsonist and monopolist, so that the Commission can use its power as monopolist to validate its decisions as monopsonist, and vice versa. Its over-all control imposes a special accountability burden on all its decisions.

(c) Consequences of adopting a High-Price Line rather than a Low-Price Line

One of the basic difficulties about agricultural support policy is that price support is generally formulated in accordance with a "high-price line". The home market prices are kept above world market prices by means of protection at the border. The alternative is a "low price line", under which world market prices are accepted domestically but with the farmers being given subsidies on products produced (and/or perhaps other subsidies). One of the consequences of a high price line is that the protection at the border must to a large extent — but not in all cases — be applied to processed products, and not to pure agricultural products produced by agricultural enterprises. For example, price support under a high-price line is not

applied to producer milk but to processed products that are traded internationally, such as butter, cheese, and milk powder. This means that the price regulations will cover a substantial part of the food processing industry and not just the farm sector, despite the fact that the controls are really intended to apply only to agriculture. Consequently, not only is agriculture sheltered from competition but so also is a more or less substantial portion of the food industry.

Even when this consideration is recognized, and when it is also accepted that the consumer as consumer plus taxpayer comes out ahead because he gets more from his total payments under the low-price line than under the high-price line it is still often argued that since food prices are weighed on one scale and tax payments on another, the political consequences of the low price line may be less advantageous than the high price line. But, however that may be, the longer-run consequences of the high price line, especially for the processing industry, is too often ignored in our calculations.

There is a tendency for processing industries involved in such marketing arrangements — and more generally as well — to adopt a uniform pricing formula, and such a formula having once been adopted as "the one best scheme" for the industry, its very existence will encourage resistance to change. Uniform schemes are sometimes revised in detail, but is unusual for a new edition to embody any fundamental departure from the original scheme. Thus each scheme tends to crystallize the state of costing practice which existed when it was first devised.

These tendencies are reinforced if there is a trend to concentration and integration in the processing and distribution of milk and milk products. Schedule "B" and "C" make it clear that this process has reached the stage where public policy might legitimately become concerned.

Table 1 makes it clear that the possibility referred to in Schedule "C" of an increase in processing and distribution margins paralleling the formula-based producer price increase is not without merit. It will be noted that the August 1979 Canadian Dairy Commission butter price was 207.4 per cent of the January 1973 price; over the same period the margin between the Canadian Dairy Commission price and the retail price was 240.0 percent. Similarly, for cheese, the August 1979 wholesale price was 228.3 percent of the January 1973 price, and over the same period the change in the wholesale-retail margin was 208.5 percent. Although these relationships do not precisely parallel the high-price, low-price line differential, they do provide a rough approximation, which indicates the strong probability of the validity of the criticism.

(d) Issues Raised by the Attempt to Obtain a "Fair Return" for Dairymen's Labour and Investment.

The double-barreled objective of tying price policy to a profitability target and a labour-income target gives rise to a number of distortions and a basic escalation problem if prices are expected to serve as economic signals. In the longer-run, such a policy tends to divorce the controlled sector from other sectors of the economy, thus requiring the adoption of more intrusive forms of control.

The consequences of substituting costs derived from fixed prices for competitive market-determined costs are force-

fully set out in this brilliant comment by MacFarlane and MacEachern:*

Table 1

Average Monthly CDC and Retail
Prices of Creamery Butter at
Toronto
(cents per pound)

	1973 (Jan.)	1976 (Jan.)	1979 (Jan.) (Aug.)	
CDC Price (93 score)	68.0	103.0	132.0	141.0
Retail Price (first grade)	<u>73.0</u> 5.0	<u>109.0</u> 6.0	<u>142.0</u> 10.0	<u>153.0</u> 12.0

CDC price, 1979 as per cent of 1973 = 207.4%

Mark-up (retail price minus CDC price)
1979 as per cent of 1973 = 240.0%

Average Monthly Weighted Wholesale Price of
Cheddar Cheese at Belleville Exchange and
Average Retail Price at Toronto*
(cents per pound)

	1973 (Jan.)	1976 (Jan.)	1979 (Jan.) (Aug.)	
Wholesale Price (in bulk lots)	62.6	106.0	133.1	142.9
Retail Price (medium coloured)	<u>113.0</u> 50.4	<u>187.0</u> 81.0	<u>229.0</u> 95.9	<u>248.0</u> 105.1

Wholesale price, 1979, as per cent of 1973 = 228.3%

Wholesale-retail margin, 1979, as
per cent of 1973 = 208.5%

*Source: Monthly Dairy Report, Ontario Ministry of
Agriculture and Food

"In the case of a high domestic support price established for a commodity above world levels, this increase in price obviously will bring forth more production unless output controls are imposed. At the same time though, while giving the impression of improving the position of farming, the benefits derived from such a program are almost immediately reflected in the producers' cost structure. This means that if correct accounting is followed the comparative production costs have increased for that commodity and its competitive

position has deteriorated relative to the rest of the world. It is usually forgotten that price is a major determinant of costs as well as vice versa and if landholders' incomes are increased as a result of higher prices then this is capitalized into the factor with the more inelastic supply, usually land. The same effect on cost takes place from subsidized credit, price stabilization schemes, tax rebates and the many other forms of agricultural production assistance which become capitalized and alter the cost structure. Hence domestic agricultural policy has direct effects on the comparative advantage of home commodities and has an important relationship to trade policy. Price and income policies resulting in subsidized production frequently end up requiring export assistance in order to be traded in world markets. Export subsidy is quite common in agriculture of advanced economies and to do this includes such things as export certificates, direct subsidy, special transportation rates, storage cost reduction, tax relief of various kinds, as well as provision of marketing assistance such as trade fairs, missions and selling organizations. In addition to these devices, a number of others are used with the primary aim of increasing farm exports or improving the agricultural trade balance and at the same time alter the competitive position of agricultural products. These include such things as: exchange depreciation, reduction in wages or other factor prices, restrictions on imports by means of tariffs, quotas, and non-tariff barriers."

* Gordon A. MacEachern and David L. MacFarlane, "The Relative Position of Canadian Agriculture in World Trade," Economic Council of Canada, Conference on International Trade and Canadian Agriculture, 1966.

Expressed in somewhat different terms, we can say that increases in the value of farm assets deriving from quota, or other, controls, from expectations of inflation or some other factor, tend to lower the estimated labour income (since it is a residual) used in the comparisons. That is, in the official calculations, the amount to be deducted from the farmer's total income to provide him with a "fair return" on his investment, will increase; as a result, the labour income will decrease. As the value of the farmer's assets grow, the gap between a fair income for him and for other workers will thus widen.

If, then, the price support is raised with a view to closing the gap in "fairness" of incomes, the increased price support will gradually be capitalized in the market value of farm assets. Thus, the investment return requirement will gradually rise, so that the intended increase in labour income does not materialize. And so the mutually-interacting escalation continued. Entry to the controlled sector becomes more difficult; prices give the wrong signals — that is, do not reflect true economic scarcity — and transfer of resources and new technological developments fail to respond as they would if comparative market efficiencies and prices prevailed.

That this relationship is quite realistic is indicated by experience in the flue-cured tobacco industry. As is indicat-

ed in the footnoted account* the value of farm acreage for farms possessing tobacco selling rights (quotas), experienced an explosive increase over a 30-year period from something in the neighbourhood of \$10 per acre to something in the neighbourhood of \$3,000. Even if these figures are substantially inflated, the increase in "investment value" which they would represent imposes a barrier to entry of a serious nature and represents an increase in "costs" which make effective competitive performance in the export market difficult to achieve.

* In the Restrictive Trade Practices Commission report on the flue-cured tobacco industry in Ontario (1956), reference was made to a study prepared by Professor W.E. Haviland, which reported that:

"It is in Norfolk [county] that Canadian tobacco has aptly earned the title *Green Gold*. In recent years some sandy land in this country which has sold for \$10 an acre before tobacco's advent was valued at as much as \$300 an acre."

Haviland considered this an unusual increase; the more common change in land values was a three-or-four-fold increase.

The Commission also referred to a report which suggested, in 1951, that tobacco selling "rights" would give a farm valuation of about \$500 per acre on the total farm acreage or \$1,000 per acre on the tobacco acreage. Although the Commission considered these figures to be rather high, it did conclude that "the acreage allotments by the Association are considered to have a substantial value per acre" (Report, p. 51).

In a 1977 newspaper report (The Globe and Mail, March 26, 1977) the following analysis of the per acre value of tobacco land subject to quota rights, and the determinants of that value, appeared:

"We've got to assess the situation and decide whether the producer can afford to produce for the export market", Mr. Raytrowsky said, "We can't afford to produce below cost".

"One of the cost elements for the Ontario producer is quotas for the production and marketing of tobacco. While there has been a reduction in the price of quotas recently, as late as two years ago quotas traded for as much as \$3,000 an acre, which is equivalent to \$5,000 to \$6,000 an acre on a producer's actual production.

"The capital value of such quotas is roughly equivalent to the differential between the Ontario price and the price judged competitive in world markets, a government official noted."

(e) *Commodity Exchange Practices*

The markets for dealing in the purchase and sale of many staple products are organized into produce exchanges. These are associations of dealers, brokers, and, in some cases, speculators, who meet together for trading in both cash and future sales of specified commodities. The exchanges are provided with elaborate facilities to enable their members to transact business quickly and without formality; they report immediately all sales and send out price quotations so that they quickly become known to all interested buyers and sellers; and they provide their members with information and services designed to facilitate informed, orderly trading. Indeed, the value of ample and accurate information and statistics — daily, weekly, monthly — is not always fully appreciated, but the absence of such information can quickly provide misleading signals to those engaged in the production, distribution and consumption of the products in question.

The short-run price signals of the market are, of course, less important where comprehensive government controls are imposed on the market, although in such circumstances the longer-run requirements of accountability render the suppression of market signals related to dynamic change a very serious matter for the industry and the economy, as has been argued above.

Nevertheless, even for the short-run operation of government-regulated commodity markets, certain procedures

must be observed for the orderly, dependable handling of transactions.

One of the obvious requirements of any product that is the subject of dealings in an organized market on a large scale, is that its quality can be determined by tests that yield almost identical results when applied by different competent officials. Until an official grade (or grades), possessing functional significance, has been declared, the technical conditions are not present for organized trading in bulk.

In addition, such restricted markets, along with more open markets, need to make provision for:

- (1) a market place;
- (2) detailed, regular market information;
- (3) the fixing of the level of commission rates;
- (4) the regulation of the forms of contracts employed for cash (and future) trading;
- (5) a procedure to establish the official price for the various grades of product for each business day; and
- (6) a system for the arbitration of disputes.

Furthermore, provision is customarily made for legal action:

- (1) against fraud or negligence on the part of any person involved in dealing in or in the handling of the specified product;
- (2) against exploitation arising from excessive charges for services rendered; and
- (3) against indirect losses due to the quality of the product undergoing deterioration before it reaches final markets.

Since thorough-going market controls create their own market "information" by allocative decisions which severely limit the scope for individual producers and sellers to respond to the imposed market signals, there is a tendency for the planning authority to consider the result as representing an equilibrium situation, and any departure from it as representing "instability". As a result of the inevitable limitations in the knowledge of such authority, especially about longer-run technical and organizational developments, the realization of equilibrium, in practice, can never be more than approximate. The closest approximation to an "equilibrium" in agricultural industries, which promotes successful economic transformation, efficient selection of entrepreneurs, and market discipline, is an arrangement in which both competition and deliberate coordination play some part. Where central direction dominates the market, it is virtually impossible to assure that the economic signals of prices and profitability should occur in rough conformity with economic needs, scarcities, and productive capabilities. As a first step in moving towards a more flexible system, it is imperative that the central authority should experiment with devices — such as a variety of contracts between buyers and sellers — which possess some of the economic signalling effectiveness of the produce exchange, inadequate as it may be, by itself.

4. Conclusion

It seems clear that the objectives of legislation setting up the Canadian Dairy Commission could be achieved with a much lower and less comprehensive level of intervention than has been employed. Furthermore, that some of those interventionist policies, in their longer-run consequences, seriously conflict with the legislative intent, namely, the adoption of a high-price line with its umbrella effect over the processing-distributing sector, the version of cost-justification as a basis for return on capital (and its indirect effect on calculations of labour income), the failure to develop an effective accountability programme, and some aspects of its price discrimination policies.

The most important thing remains to be said: economic progress depends, as much as on any other factor, on the energy, inventiveness and creative imagination of particular men, attributes which are more likely to be developed and maintained by opportunities for independent action and by the relatively unconfined exercise of initiative. The consequences of excessive centralization may be more serious in the long than in the short run. As George B. Richardson of Oxford University has remarked -

"The central authority might, it is true, deliberately set out to favour diversity of decisions by its subordinate agencies, but there is no strong presumption that it will in fact do so; while every man will admit to his fallibility, few of them, as Mill observed, think it necessary to take precautions against it."

[Information and Investment, pp. 219-220]

The forces of economic progress are not self-perpetuating but tend to come to rest through the entrenchment of existing interests. The search for stability too often becomes a search for pseudo-security, security, that is, that is based on the inhibition of change, and the avoidance of dynamic change. The fact that these considerations are incapable of precise quantification is no reason for doubting their basic importance.

SCHEDULE "A"

MONTHLY DAIRY REPORT

(Ontario Ministry of Agriculture and Food — June 1979)
Interim Comprehensive Milk Marketing Plan

In Canada there are two milk markets; one for milk used for fluid purposes (beverage milk and fresh cream) and one for milk used for industrial purposes (butter, cheese, ice cream, etc.) Industrial milk is mainly under federal jurisdiction while fluid milk is primarily a provincial responsibility. The following report deals with the industrial milk sector only.

In December of 1970, Ontario and Quebec were the first two provinces to sign the Interim Comprehensive Milk Marketing Plan with the Canadian Dairy Commission (CDC). Except for Newfoundland, by 1974 all provinces in Canada had joined this plan. (Table 1).

Table 1
Market Sharing Quota Entitlement by Province

Province	Date of Entry into Plan	April 1 1976	April 1 1977	April 1 1978	August 1 1979 ¹	Provincial percentages August 1 1979
— million kg butterfat —						
Prince Edward Island	Dec. 1/71	2.22	3.10	3.10	3.10	1.9
Nova Scotia	Apr. 1/74	1.86	2.03	1.99	1.99	1.2
New Brunswick	Apr. 1/74	2.04	2.23	2.18	2.18	1.3
Quebec	Dec. 1/70	76.75	80.53	78.92	78.92	48.0
Ontario	Dec. 1/70	50.53	52.60	51.55	51.55	31.3
Manitoba	July 1/72	6.30	6.55	6.42	6.42	3.9
Saskatchewan	July 1/72	3.99	4.16	4.28	4.28	2.6
Alberta	Apr. 1/72	10.84	11.27	11.04	11.04	6.7
British Columbia	Oct. 1/73	4.99	5.20	5.10	5.10	3.1
Canada		159.53	167.67	164.58	164.58	100.0

¹ The dairy year is presently being changed from April to March period to an August to July period.

Source: Dairy Farmers of Canada Facts and Figures 1979, Table 23.

The main intention of the plan was to guarantee industrial milk producers a fair return for their efforts and investment. A formula known as the Industrial Milk Returns Adjustment Formula was adopted in 1975. This formula

indexes the target price of milk to cash input costs and to the consumer price index. The Federal Minister of Agriculture announces the official target price for producers based on this formula and the Canadian Dairy Commission sup-

ports the target price by offering to purchase butter and skim milk powder at stated prices.

In order to sustain the price for industrial milk without the Canadian Dairy Commission incurring enormous purchases of butter and skim milk powder, it has been necessary to set production quotas for producers, known as Market Sharing Quota (MSQ). The size of the total

Canadian quota (Table 2) is decided by the Canadian Milk Supply Management Committee, which is composed of producer and provincial government representatives and chaired by the Canadian Dairy Commission. The committee adjusts the Canadian quota in such a manner as to balance production with Canadian requirements for butter-fat at the current price.

Table 2
Canadian Market Requirements for Industrial Milk
(Demand by Product)

	1974/5	1975/6	1976/7	1977/8	Estimate 1978/9
— million hectolitres of milk —					
Butter	30.6	29.3	28.1	26.6	25.5
Cheddar Cheese	9.2	9.0	8.8	8.9	9.0
Other Cheese	6.3	6.6	7.0	7.8	8.4
Other Products	6.9	6.9	6.9	6.9	6.9
Canadian Requirements	53.0	51.8	50.8	50.2	49.8
less cheese imports	2.4	2.2	2.3	2.3	2.2
	50.6	49.6	48.5	47.9	47.6
less skim-off	3.5	3.8	4.0	4.3	4.5
TOTAL CANADIAN REQUIREMENTS	47.1	45.8	44.5	43.6	43.1

**Source Canadian Dairy Commission.*

While producer-to-producer transferability of MSQ within a province varies from province to province, MSQ may not be traded between producers in different provinces. Within the Interim Comprehensive Milk Marketing Plan there is a provision for interprovincial transfer of MSQ based on each province's production performance. Since interprovincial transfer of MSQ is based on production performance, and also because a successful market sharing plan must meet market demand, a high level of MSQ utilization is important. Currently provincial shares of MSQ are frozen, until August 1, 1980 by agreement of the Canadian Milk Supply Management Committee. The last interprovincial transfer of MSQ took place April 1, 1976. At present a sub-committee of the Milk Supply Management Committee is completing a review of the entire Interim Comprehensive Milk Marketing Plan. A follow up report will appear in a future issue.

SCHEDULE "B"

Concentration and Integration in Processing and Distribution of Milk and Milk Products*

Milk

Between 1945 and 1975, Dominion Dairies Ltd. acquired 17 dairies, Silverwoods Dairies Ltd. acquired 21, Borden's increased their dairies by eight, Beatrice foods (owned by

Beatrice Foods Corp. of Chicago) acquired 31 and Beckers Milk Co., six. The number of franchised dairies increased by 119 firms in the 10 years between 1965 and 1975. The franchises appear to predominate in smaller communities, while mergers are accentuated in larger areas. The franchises consist of dairies that distribute milk already processed and packaged by larger dairies that have processing plants.

In a submission to the Royal Commission on Corporate Concentration, the Ontario Milk Marketing Board claimed that "the result of all this concentration in the milk processing industry has been a lessening of competition. In addition, there is the danger that a vast majority of the fluid milk business will fall into the hands of one or two large processors who will have virtual control of the market".

With corporate retailers entering into the processing and distribution of milk and other dairy products, the trend towards vertical integration in the dairy industry is increasing. Beckers, with 515 stores, is a wholly-owned subsidiary of Silverwood Industries Ltd. George Weston Ltd., which controls dozens of retail organizations, owns and operates Donland's Dairy in Toronto, Royal Dairy in Guelph, Clark Dairy in Ottawa, Neilson's Ice Cream in Toronto and has a 50 per cent interest in Foremost Dairy in Vancouver, a milk processor and ice cream manufacturer.

Although integration backward from retailer to processor may add stability, and, in some cases, increase competition

in those situations where a few large dairy companies may otherwise be able to monopolize the processing of milk products, the Ontario Milk Marketing Board warned:

This continuing vertical integration between retailers and milk processors is, we submit, a dangerous and undesirable trend. It leads to the concentration of the milk processing and retailing industries into fewer and fewer hands. The great danger, if this trend continues, is that price competition would be curtailed with the result that consumers would pay excessive prices for dairy products such as fluid milk, cheese and ice cream.

* Bureau of Competition Policy, Consumer and Corporate Affairs Canada, *Application of Competition Policy to the Food and Agriculture Sector* (1978)

In Quebec, the Bureau is precluded from examining mergers between dairies by the Quebec Agricultural Marketing Act, which gives regulatory powers to the Quebec Agricultural Marketing Board. The Board controls all aspects of processing and distribution of dairy products. A similar situation exists in some other provinces.

SCHEDULE "C"

Concentration and Competition in Ontario's Fluid Milk Industry*

"Government Supervision of the Fluid Milk Trade"

"Since 1934 the Ontario government has been deeply involved in all aspects of the fluid milk industry, from primary production to final retailing. At the distributor level the government, through its quasi-judicial Milk Board, has played the role of policeman and watchdog and has exerted a powerful influence on prices, trade practices, conditions of entry, indeed the whole competitive environment, or lack of it, in the industry.

"From 1934 to 1948 the Board set prices to consumers and to producers directly, thereby forcing distributors to operate at specified margins. After the scathing criticisms of this retail price control by Justice Wells in 1947, it was abandoned, only to be replaced in 1951 by a system of formula pricing.

"Licensing has been a major instrument of government control and supervision over the industry. The Board (and its successor, the Milk Commission of Ontario) has the power to prevent any operator from participating in the fluid milk trade in Ontario simply by refusing to grant him a licence. Through its licensing policy the Board has promoted a reduction in the number of existing distributors, and has discouraged new firms from entering the trade. By prescribing specific territories or distribution areas on its licences, moreover, the Board has effectively insulated individual markets and individual dairies from outside competition, and curbed potential expansion by certain aggressive firms. These artificial restrictions have mitigated [sic] against the drive for more efficient handling and distribution of fluid milk. Multiplant firms, for example, have been

forced to continue operating branches in small centres, rather than serving these centres from outside, in order to protect their licensing privilege in such centres. Much the same result has been achieved in smaller centres such as Oakville, Cobourg and Trenton by the enactment of municipal by-laws to protect their local dairies from out-of-town competition.

* Duncan Allan, "Concentration and Competition in Ontario's Fluid Milk Industry", *Ontario Economic Review*, Vol. 3, No. 7, Nov. 1965, pp. 3-14.

"The Present Position of the 'Big Three'"

"In 1947 Justice Wells made the following observations on the significance of the 'Big Three' in the Ontario fluid milk industry:

"These three companies unquestionably exercise a large influence in the industry in Ontario, not only because of the efficiency of their methods and the high quality of their products, but because of the lead which they give independent concerns which operate in a similar fashion."

"In addition he noted that the 'Big Three' controlled 30 per cent of the market for fluid milk, chocolate drink and cream in 1945. As we have seen this 'Big Three' share climbed to some 35 per cent by 1961. Today it may be closer to 40 per cent of total industry sales.

"This postulation that the 'Big Three' market share has risen considerably since 1961 is supported by two observations. First, there has been an intensification of merger activity in general since 1961 and the 'Big Three' have played a leading role in this activity. Five large independents have been absorbed by the 'Big Three' subsequent to our 1961 measure of concentration (Paulger's-Blantyre, Terrace Hill, Mason's, Roselawn Farms, and Rainbow); only three of the largest independents, on the other hand, have purchased additional sales volume since 1961. Second, and perhaps equally important, has been the tremendous expansion in 2% sales since 1961, as opposed to an actual decline in standard milk sales. This shift in the product mix of the industry has almost certainly boosted the sales of the larger dairies such as the 'Big Three' relative to the sales of distributors handling only the regular line of milk.

The present 35 to 40 per cent control of industry-side sales by the three large chain dairy organizations considerably understates their actual or potential economic power in particular markets. In each of the five major markets except Toronto, the 'Big Three' along with a single independent virtually overwhelm other distributors. In Toronto, four aggressive independents — Becker, Donlands, Valley View and Findlay-Kemp, have prevented the 'Big Three' market share from climbing above 60 per cent. The overall trend, however, is clearly in the direction of greater concentration of sales and control of the fluid milk industry in the hands of a few giant firms.

"Interdependence of Distributors in Pricing"

"In our earlier discussion of the nature of demand for fluid milk, it was noted that the pricing behaviour and trade practices of distributors in a market tend to be identical or uniform. The basic reason for this uniformity in behaviour is the high degree of interdependence among distributors, due to:

- (a) the limited number of firms in each market;
- (b) the homogeneous nature of the product, which means that consumers will readily shift from one distributor to another;
- (c) the inelastic demand curve in a market;
- (d) the identical buying price or cost to distributors for their raw milk requirements.

"Under these conditions, a price reduction by any distributor in a market will in all probability be met by the others, and conversely, any single firm will be reluctant to raise prices for fear that his competitors won't follow. In essence this means that the collective body of distributors in any given market finds it in its best interests to practise restraint or discipline in the matter of pricing. This predisposition towards a 'live and let live' policy in pricing and the tranquility it implies is often spoken of and praised as market stability or orderly marketing.

"The interdependence and essential unity of interests of distributors in Ontario are reflected in their highly effective trade organization — the Ontario Milk Distributors Association. Under the OMDA, distributors have come together in each market to present a united front in bargaining with producers and with unions. The OMDA has also acted to bring about simultaneous retail price increases across the province whenever the government-sponsored pricing formula has indicated an increase in producer prices. In recent years there has been some evidence of a schism developing with the OMDA, with the small distributors lined up on one side and the large dairies on the other.

"In 1948 some vigour was restored to the industry by relaxing the direct control of retail prices. At that time the Milk Board was sufficiently wary of the potential for collusion among distributors that it held on to the power to impose maximum retail prices — a power which it retains to this day. Despite the strong distributor predisposition to avoid price competition, and despite a solid tradition of identical pricing, however, decontrol was rapidly followed by a revival of price competition in the industry."

APPENDIX 13

Commission of Inquiry into
Certain Allegations Concerning
Commercial Practices of the
Canadian Dairy Commission

THE EVOLUTION OF ORGANIZATION AND REGULATION IN THE ONTARIO AND CANADIAN DAIRY INDUSTRIES

(The Schedules are produced separately)

George R. McLaughlin
March 1980

⁽¹⁾ Veronica McCormick, *A Hundred Years in the Dairy Industry*, (Dairy Farmers of Canada, 1968), p. 124

⁽²⁾ *ibid.*, p 154

1. "In the early days of settlement, butter and cheese was made on the farm, generally for the family use. Farm cheesemaking was a skill that was handed down from one generation to another and was often a family aptitude."⁽¹⁾
2. In communities where farmers did not have the skills within their own families, cheese and butter factories were developed by those who did have the skills, usually on an individual proprietor or joint stock company basis. Many of these factories were "co-operatives" in the sense that they made cheese or butter for a number of local farms, and the farmers concerned may have co-operated in the establishment of the factory. In these cases the factory owner assumed all the costs of manufacturing and marketing and returned to the farmer the sale value of the product less his costs and a margin of profit. There were also true co-operatives among these early factories; i.e. non-profit organizations of farmers which provided services at cost for the benefit of the members.
3. Governments encouraged factory organization because it provided a vehicle through which to provide instruction to farmers in improved production techniques and quality of product. Co-ordination and co-operation among factories resulted from this instruction, and from inspection, and by 1900 organizations representing groups of factories had evolved in most rural areas.
4. Producers also began to organize around the turn of the century. Those who produced cream and industrial milk, as it has come to be called, organized locally around the factory to which they delivered their products. Producers of milk for direct human consumption ("fluid milk") organized, initially around urban markets, to attempt to secure better prices and conditions from the distributors to whom they sold their milk. Such organizations began in Hamilton and Montreal as early as 1903.
5. Producer dissatisfaction during periods of low prices stimulated the forces of organization. The Ontario Milk and Cream Producers' Association was formed in 1917. Its main purposes were: "To act as a medium of communication, to advise re the enactment of dairy legislation, to establish a bureau of information on dairy problems, to offer mutual protection, to establish a uniform system of time contracts in relation to milk pricing, to obtain a better deal re traffic rates on railways and to conduct a publicity campaign to promote the consumption of milk"⁽²⁾. As part of its attempt to fulfill its purposes of providing information to producers the Association originated the Ontario Milk Producer magazine in June of 1925, which is still published by Ontario's milk producers.

Initially only fluid milk and cream producers were involved, but as the manufacture of condensed and evaporated milk and milk powder became more important producers shipping milk for such uses became represented within the Association. This Association appears to have been the first instance in Canada where all the producers of milk were organized within one provincial association. It is remark-

able that, considering its lack of finances and the separate concerns of its diverse groups, it continued to function for fifteen years.

6. In 1932 the producers of fluid milk organized The Ontario Whole Milk Producers' Association (later "The Ontario Whole Milk Producers' League") to attempt to deal more directly with what they regarded as the extremely low prices and unsatisfactory conditions of sale. The creation of this organization meant the end of the comprehensive 1917 association, and the old organization became defunct. Formation of The Ontario Whole Milk Producers' Association and the disintegration of the Ontario Milk and Cream Producers' Association was followed by the formation of The Ontario Concentrated Milk Producers' Association in 1934 and the Ontario Creamery Patrons' Association in 1935.
7. Independently of these developments The Ontario Cheese Factory Patrons' Association came into existence in 1933 as a federation of county organizations of milk producers shipping to cheese factories. Most provincial dairy organizations in other provinces came into existence much later.
8. In the early 1930's chaos in milk pricing, discriminatory buying practices and an increasing number of farmers turning to milk production in search of steadier incomes, brought about provincial milk control legislation, beginning with Manitoba in 1932. This control was exercised primarily over fluid milk insofar as prices and pricing methods were concerned, although control over the quality of all milk offered for sale also has been exercised. In most provinces, fluid milk prices are still established by provincial government bodies called variously "Milk Board" (B.C.), "Public Utility Board" (Alta.), "Milk Control Board" (Sask. and Man.), "Milk or 'Dairy' commission" (Ont., N.S. and P.E.I.), "Dairy Products Commission" (N.B.), or "Agricultural Marketing Board" (Quebec), although in some provinces such bodies are only involved in pricing where there is a dispute between buyer and seller as to the price that should be established. One of the primary functions of these boards is the inspection and licensing of milk distributors and milk processors, the pressure for which arose out of the severe price competition of the thirties when established procedures for quality control, payment of farmers, and so on either were not uniformly applied or did not exist. Out of these chaotic conditions was born the idea of marketing quotas for fluid milk.⁽³⁾

⁽³⁾ See "Milk Marketing in Ontario" — an address to the Toronto Board of Trade, March 6, 1972 by George R. McLaughlin, at page 5 (Schedule 1)

⁽⁴⁾ S.C. 1934 (24 and 25 Geo.5), c.57. (Schedule 2), amended by The Natural Products Marketing Act Amendment Act, 1935, S.C. 1935 (25 and 26 Geo.5), c.64 (Schedule 3).

⁽⁵⁾ Reference re The Natural Products Marketing Act, [1936] S.C.R. 398 (Schedule 4); affirmed by A.-G. B.C. v. A.-G. Canada, [1937] A.C. 377 (Schedule 5)

⁽⁶⁾ S.C. 1944, c.29 (Schedule 6)

⁽⁷⁾ S.C. 1947, c.10 (Schedule 7)

⁽⁸⁾ S.C. 1957-58 (6 Eliz. II. v.1) c.22 (see Schedule 8 for statute as it appears at R.S.C. 1970), c.A-9, and Schedule 9 for the extensive amendments enacted as S.C. 1974-75, c.63.

⁽⁹⁾ See Schedule 8, Agricultural Stabilization Act, Section 10(1)(a).

9. It was also during the depression years that the Federal Government began its first major support of farm prices. The Natural Products Marketing Act, 1934 ⁽⁴⁾ would have controlled prices and market quantities of butter and cheese had it not promptly been declared *ultra vires*⁽⁵⁾.
10. During World War II the Federal Government began to pay subsidies for fluid milk, manufacturing milk and farm-separated cream. The main purpose was to increase production through incentives to farmers while at the same time holding down prices to consumers. In 1944 Parliament passed The Agricultural Prices Support Act, 1944⁽⁶⁾ to support farm prices during the transition from war to peace and to prevent a repetition of the farm prices collapse of 1921.
11. The Agricultural Products Act, passed in 1947⁽⁷⁾ extended the Federal Government's activities to taking ownership of agricultural products and contracting with overseas purchasers for the sale of its holdings of surplus products into the export market.
12. In 1958 the Agricultural Stabilization Act⁽⁸⁾ was passed, replacing the Agricultural Prices Support Act. The purpose of this new legislation as set out in the preamble was to stabilize "the prices of agricultural commodities in order to assist the industry of agriculture to realize fair returns for its labour and investment, and to maintain a fair relationship between prices received by farmers and the costs of the goods and services that they buy, thus to provide farmers with a fair share of the national income". The Agricultural Stabilization Board, created to carry out the provisions of the Act, used the offer-to-purchase-method⁽⁹⁾, applied primarily to butter and cheese, as a means of stabilizing returns in the dairy industry. It also used the method of direct subsidies to producers of manufacturing or industrial milk from 1959 to 1963, and since 1965. However, until the beginning of the Canadian Milk Supply Management Program in 1970, that portion of the milk from fluid producers which was not required by dairies for fresh fluid milk sales, and which was used instead to make manufactured dairy products, did not qualify for any of the direct federal subsidies. It was felt that fluid milk producers received enough money from the fluid sales portion of their deliveries, and that a subsidy on the manufactured portion could not be justified.
13. In 1966 the Agricultural Stabilization Board established an export assistance levy of 10¢/cwt., which was deducted from the subsidy payments to producers of manufacturing milk and cream as a means of defraying some of the losses on export of product made from such milk. Since it was a deduction on subsidy payable, and since the manufacturing milk shipments of fluid milk producers did not qualify for subsidy, fluid milk producers contributed to the surplus to be exported but were not required to help pay the costs of export of such surplus. This cost fell solely on the manufacturing milk and cream shipper through the export assistance levy.
14. The Federal Government had introduced its offer-to-purchase/direct subsidy program of dairy industry support in part because of pressure from producers,

processors and provincial governments. The problem of accumulated surpluses in 1963, particularly of butter, was acute. The First Canadian Dairy Conference was called by the industry to try to deal with the trends in production and marketing and "to discuss constructive policies for the future of the industry". It arose also in part as a result of the collapse in Ontario of attempts to forge one united dairy producer marketing organization, and the resultant indefinite postponement of talks between Ontario and Quebec producers concerning co-ordinated action on milk marketing problems. The Conference's main recommendation was the formation of a co-ordinating and advisory committee, "to be called the Canadian Dairy Advisory Committee", constituted to make recommendations on principles and policies of benefit to the industry as a whole. The Committee distributed its report to the industry in August 1965.⁽¹⁰⁾ One of the recommendations was that a National Dairy Authority be established.⁽¹¹⁾ The Canadian Dairy Commission Act was passed in July 1966⁽¹²⁾, and the Commission was fully operative by April of 1967.

15. In the interim between the Dairy Conference of 1963 and the Canadian Dairy Commission's commencement of operations in 1967, the dairy producers in a

⁽¹⁰⁾ See Schedule 10 for The Report of the Canadian Dairy Advisory Committee, 1965.

⁽¹¹⁾ *Ibid.*, page 22, para. 20.1

⁽¹²⁾ S.C. 1966, c.34 (Schedule 11)

⁽¹³⁾ The Ontario Cheese Producers' Marketing Board was established in 1937 under Ontario's Farm Products Control Act [R.S.O.1937, c.75 — see Schedule 12]. It replaced a marketing scheme set up in 1935 under the federal National Products Marketing Act, 1934, which was set aside when the latter act was declared ultra vires in 1936. It had authority to control the local auction markets or "cheese boards". Late in 1951, it was made the agency to market all Ontario cheese sold for export, and did so by purchasing any and all Ontario cheese surplus to Canadian requirements at minimum prices negotiated with the licensed buyers.

⁽¹⁴⁾ The Ontario Cream Producers' Marketing Board was established in 1947 under Ontario's Farm Products Marketing Act, 1946 [S.O. 1946, c.29 — see Schedule 13]. However, marketing regulations were not made until 1955, when provision was made for negotiations of minimum prices for cream; the terms and conditions of production and sale of cream to creameries, and the deduction by creameries of fees from producers to be paid to the Board.

⁽¹⁵⁾ The Ontario Concentrated Milk Producers' Marketing Board was constituted in 1954 under Ontario's Farm Products Marketing Act to represent all producers whose milk was shipped to manufacturing plants. It had authority to represent all producers in price negotiations, arbitrations and representations to governments on industry support programmes. It required all milk manufacturers to deduct fees from producers for payment to the Board.

⁽¹⁶⁾ The Ontario Whole Milk Producers' League was granted statutory powers in 1957 under The Milk Industry Act, 1957 [S.O. 1957, c.70 — see Schedule 14] to negotiate for all provincial fluid milk producers market differentials above and below the formula price (introduced in 1954), terms and conditions of sale and transportation rates.

These four groups of producers had been represented for many years by voluntary associations, and it was largely the buying practices of the buyers of milk throughout the decade after World War II that persuaded them to seek statutory powers of representation.

⁽¹⁷⁾ Enacted as S.O. 1965, c.72. See Schedule 15 for the Act as it stood at the end of 1978, and Schedule 16 for The Milk Amendment Act, 1979, which authorizes the delegation of certain powers to the Canadian Dairy Commission.

⁽¹⁸⁾ See Schedule 17 for the Committee's summary of its principal recommendations.

⁽¹⁹⁾ See Schedule 18 for a description of O.M.M.B. and its powers — "Ontario Milk Marketing System", address by G.R. McLaughlin to the National Mastitis Council, Inc., August 14, 1975.

number of provinces had been searching for ways to deal more equitably with the problems arising between fluid milk and manufacturing milk producers. Manufacturing milk producers were demanding better prices, and "greater equity", especially in dealing with the surplus of milk from fluid milk producers which found its way into the processing of manufactured milk products, thus adding to the surplus and holding down the price.

16. Failure to agree on one overall milk marketing plan, despite successive repeated attempts by the Ontario Cheese Producers' Marketing Board,⁽¹³⁾ the Ontario Cream Producers' Marketing Board,⁽¹⁴⁾ the Ontario Concentrated Milk Producers' Marketing Board,⁽¹⁵⁾ and The Ontario Whole Milk Producers' League,⁽¹⁶⁾ all of which had been granted statutory marketing powers of various kinds through the 1940's and 1950's, resulted in the request by these groups in 1963 for the Ontario Minister of Agriculture to create one marketing organization. This he did in 1965, after convening an inquiry into the problems of the industry by a non-industry committee chaired by Professor S.G. Hennessy of the University of Toronto. The Milk Act⁽¹⁷⁾ of Ontario, which was a response to the Report of the Milk Industry Inquiry Committee,⁽¹⁸⁾ replaced all previous milk marketing regulations. It created the Ontario Milk Marketing Board to replace three of the previous four dairy producer organizations in Ontario and to reorganize the producer part of the industry.⁽¹⁹⁾ The Ontario Cream Producers' marketing Board, because of the different nature of its product, continued in existence.

17. At about the same time the Quebec Federation of Industrial Milk Producers (La Federation des Producteurs de Lait Industriel de Quebec) organized with marketing powers under the Quebec Agricultural Marketing Board, and the Quebec Fluid Milk Producers Federation (La Federation des Producteurs de Lait (Naturel) du Quebec), spearheaded by the experiences of the Montreal Whole Milk Producers suppliers' Board, followed suit. These boards in Ontario and Quebec had authority to represent all of their province's producers in matters of pricing and of quotas. As a consequence of the formation of the Canadian Dairy Commission, with authority to deal with marketing problems in interprovincial and international trade, and the Milk Marketing Boards (or Federations) in Ontario and Quebec, with authority to deal with pricing and quotas, the essential elements were present to carry out some of the most important recommendations of the Canadian Dairy Advisory Committee.

18. Initially the Canadian Dairy Commission used "subsidy eligibility quotas" to indicate to producers that portion of their milk production on which direct subsidy could be expected to be received. The Commission was required to carry out the Government's plan to pay subsidy only on the volume of milk from manufacturing or industrial milk producers that was required for Canadian consumption. In addition it deducted from the subsidy payment (as the Agricultural Stabilization Board had done before it) an export assistance levy to cover its losses on export, if

any. The inequity in this plan was that fluid milk producers could produce as much milk surplus to their quota or share of the fluid market as they wished, such milk contributing to the surpluses then existing, and while attracting no federal subsidy, neither did it contribute anything to the cost of surplus disposal or export assistance. However fluid milk producers did receive the market price for such milk, a price which was supported by the C.D.C.'s Commission's offer-to-purchase program.

19. In order to contain the surplus production of manufacturing or industrial milk by fluid milk producers as well as by manufacturing milk producers, and to assure the farmers' active participation in the cost of the export assistance program, it was necessary for those organizations with statutory powers over prices and quotas to work together with those operating the price support, subsidy and export assistance programs.
20. This led to the organization, in late 1970, of the Canadian Milk Supply Management Committee and the Interim Comprehensive Milk Supply Management Agreement,⁽²⁰⁾ which was initially signed by Ontario, Quebec and the Federal Government through their respective agencies. In most of the other provinces fluid milk production was the major part of their dairy industries. Ontario and Quebec produced about 75% of Canada's total supply and over 80% of its manufacturing or industrial milk. When these provinces realized they could obtain subsidy funds for the non-fluid portion of the production of their fluid milk producers they took the necessary steps to establish provincial agencies with statutory powers to administer quotas, and then join the national plan. All nine dairy producing provinces were signatories by the end of 1974. (Newfoundland imports almost all of its dairy product requirement.)
21. While the Federal Government, through its agency the Canadian Dairy Commission, has the authority to use quotas as a means of distributing its subsidy funds (e.g. subsidy eligibility quotas), it appears to have no constitutional right to use quotas for the pricing of a product within a province. Provincial agencies appear to have no constitutional authority to make levies against market returns to cover costs of export, and hence the necessity for such agencies to seek and obtain an "extension of powers" under Federal legislation.⁽²¹⁾
22. This was the package that was possible to implement through the co-operation of the provincial milk producers organization and the provincial and federal governments' dairy marketing agencies. The cement which brought and held it all together, was the dairy producers' desire over many years to find a way to solve the supply and price problem across the country in a manner they found more satisfactory. The attraction which brought the provincial governments to agreement so readily (compared at least to all previ-

ous attempts) was the additional federal subsidy payable on manufacturing or industrial milk produced by fluid milk producers.

23. The Canadian Dairy Commission has carried on the programs of the Agricultural Stabilization Board in its support price program (offer-to-purchase) and its direct subsidy program, although these have been modified over the years. Since the advent of the Canadian Milk Supply Management Program and the Committee which establishes the annual policies respecting the quotas (called "market-sharing quotas" or "MSQ", as opposed to fluid milk quotas) it has been accepted that the national quota should approximate Canada's requirements on a butterfat — basis for manufactured milk products plus traditional exports less permitted imports. The national quota is adjusted periodically to reflect predicted changes in demand or policy in these three areas. Since marketing quotas can only be administered provincially, changes in the provincial allotments of MSQ lead in turn such adjustments by the provincial milk marketing agencies, among the producers within the province, as may be agreed to by the Canadian Milk Supply Management Committee. It has been accepted generally that such direct subsidy funds as the Federal Government decides to pay on manufacturing or industrial milk will be prorated over all of the MSQ representing Canadian domestic requirements for butterfat. The Federal Government could establish the total of the MSQ to be produced rather than allowing the Committee to do so by dictating the amounts on which it is prepared to pay subsidy. It is participant in the Committee, however, and has generally been satisfied to use its influence within the Committee in the establishment of the annual MSQ, rather than to do so arbitrarily outside the Committee through dictating the amount of the MSQ to be covered by subsidy.
24. The Canadian Dairy Commission operates an offer-to-purchase program in which it establishes floor prices at which it will buy product (butter and skim-milk powder primarily) if there are no other buyers above that price. Butter has traditionally been a very seasonal product from a manufacturing point-of-view and most of it has been produced during the pasture season. In order to stabilize butter prices to consumers and butterfat prices to dairy farmers and the C.D.C. (and the Agricultural Stabilization Board before it) has purchased butter at its established floor prices during the spring, summer and fall and sold it back to the trade in the winter time at its floor price plus storage costs. When butter became surplus to Canadian requirements it was in the C.D.C.'s possession, and it was the C.D.C. which was obligated to find an export market for it at the best possible price. When dairy farmers became responsible, through the export levy, for financing the difference between domestic prices and export market prices for products supported through the C.D.C.'s programs, they became much more interested in the C.D.C.'s export marketing programs and much more demanding that the C.D.C. provide the same or better marketing expertise in world markets as our major competition; i.e. Australia, the EEC and New Zealand.

⁽²⁰⁾ See Schedule 19 for a description of the Committee and its purposes and for copies of the agreements.

⁽²¹⁾ See Schedule 20 for the Agricultural Products Marketing Act, R.S.C. 1970, c.A-7 and the Ontario Milk Order of 1970 made thereunder.

25. This led to an expansion of the C.D.C. staff in the marketing area as well as a tightening up of its supervision of agents involved in the handling of the products for which it carried the export responsibility. It also led to a more public accounting to provincial producer organizations of the Export Equalization Fund,⁽²²⁾ into and out of which producer monies were paid.
26. Since the MSQ was established to represent Canadian requirements for butterfat, since a hundred pounds of milk yields approximately 4.2 lbs. of butter and 8.0 lbs. of skim milk powder, and since Canadians use about the same quantities of each, it follows that satisfying Canada's requirements for butterfat brings forth a surplus of skimmilk powder. The gradual reduction in the number of farm-separated cream producers and in the number of creameries, and the increase in factory-separation with the consequent increase in skim milk (which was previously fed to swine, calves and poultry on mixed farms) created a surplus of skimmilk powder following on the heels of these new controls which had been designed to relieve the previous problem of surplus butter. The butterfat exchange program, undertaken over the past few years by the C.D.C., is an attempt to find export markets for dairy products containing both the butterfat and skimmilk portions of milk, (i.e. whole milk) thus reducing our skimmilk powder surplus. It may require an increase in butter imports to provide our Canadian requirements for butter, to the extent that the butterfat exported in whole milk products may deplete the supply required for domestic use. At the same time, however, world prices of whole milk products are generally well above world prices of skimmilk powder, thus reducing the export assistance required from dairy farmers.
27. One of the achievements of the C.D.C. is the excellent avenues of communication which have been opened as a result of the creation of the Canadian Dairy Commission and the various provincial, federal and federal-provincial programs which have evolved as a result. In addition to the Consultative Committee to the Canadian Dairy Commission, which was made up of producer and processor representatives, and which, at least up to February, 1977, (since which time it has not met,) was used much like a board of directors by the first two Commission chairmen, the Commission has met with representatives of groups affected by its policies at their request. Its members attend most provincial producer and processor meetings in each province as well as accepting invitations to more local meetings when possible. This whole area of communication has assisted materially in broadening the understanding of Canada's dairy producers not only of Canadian dairy problems and policies, but of the problems and policies of the international market as well.
28. Throughout the development of marketing techniques involving federal-provincial co-operation, attempts continued to remove the pricing of milk from short-term political considerations to more long-term industry stability considerations. There evolved in Ontario a trial of formula pricing of fluid milk in 1954. It became mandatory with the passage of the Milk Industry Act (1957). While the original formula was amended several times and placed under a moratorium in 1965, fluid milk prices to producers in Ontario were again established through a formula⁽²³⁾ agreed upon by the newly formed producers marketing board, the processors organization and the provincial government in 1968. Formula pricing of fluid milk was introduced into British Columbia with the Milk Industry Act of 1956.⁽²⁴⁾
29. Formula pricing was requested of the Federal Government over a number of years, to be applied to its pricing influences on manufacturing milk. Finally, formula pricing was introduced in April of 1975,⁽²⁵⁾ as an indication of the prices which should be received by dairy farmers for manufacturing or industrial milk. The Federal Government accepted the obligation to establish the combination of product support prices and direct subsidies at a level which would permit acceptable margins to processors and return to producers the price indicated by the formula.
30. The dairy industry in Canada is very tightly controlled as to volumes and prices. Producers have been willing, after some 60 years of uncertain markets and unstable prices, to accept that the volumes of milk to be produced must bear a close relationship to the available markets for dairy products if some guarantee of "reasonable returns" is to be forthcoming. They have supported the establishment of, and have established themselves, agencies which are necessary to control the volumes and the prices which prevail in the industry. They have been seeking ways to accomplish this kind of security for their investment of capital and labour since dairy organizations began at the beginning of this century. Present programs and industry structure will continue to evolve as it is influenced by changing markets and new technology.

⁽²²⁾ The Export Equalization Fund is a separate accounting procedure operated by the Canadian Dairy Commission into which producer export levies and returns from domestic sales of imported butter are credited and out of which purchases of products (under the offer to purchase programme) are charged. In simplified terms, any shortfall in the account in one year is made up by increases in producer export levies the following year, and likewise any surplus in the account is offset by reductions in producer export levies the following year.

⁽²³⁾ See Schedule 21, "Pricing Fluid Milk at the Farm Level (An Explanation of Formula Pricing for Raw Milk from the Farm as practiced in Ontario)", O.M.M.B.

⁽²⁴⁾ See Schedule 22 for Milk Industry Act, S.B.C. 1956, c.28.

⁽²⁵⁾ See Schedule 23 for descriptive material regarding the Returns Adjustment Formula.

Fluid Milk Prices and Quotas

31. The price received by dairy farmers for fluid milk is a provincial responsibility. Such prices are generally established through negotiation and, if necessary, by arbitration. In some provinces prices to farmers are established by government regulation after public hearings. In Ontario, prices are established by regulation of the producer marketing board, and are then subject to appeal to a government tribunal. Some provinces also regulate prices which processors and retailers may charge consumers. Formulae are used in

many provinces to indicate the level of prices to farmers in relation to production costs and market conditions.

32. Fluid milk is produced under a daily quota in the hands of each producer of fluid grade milk. Such quota is the amount or share he has of the total fluid milk requirements of his province, region or market. It is in fact a contract which requires him to supply a certain daily volume of milk, usually with some tolerance allowed for unseen circumstances, and which guarantees him a certain level of payment for the quota milk, based upon compositional and hygienic quality.

Industrial Milk Prices and Quotas

33. Industrial milk prices are influenced by the Federal Government through an offer-to-purchase programme operated by its agency, the Canadian Dairy Commission. Such activity supports the market price of certain industrial milk products, namely, butter, skim milk powder and cheddar cheese. In addition, returns from the marketplace are supplemented by a direct federal subsidy to producers on milk which is required to meet Canada's domestic requirements, less imports, plus exports. The subsidy is paid to each producer on milk produced within his annual industrial milk quota, called market-sharing quota or MSQ. The total of the market-sharing quotas in the hands of producers is that amount estimated to be required to bring forth Canada's requirements.
34. Target returns to producers for industrial milk are indicated by a formula operated by the Federal Government. The Government uses the combination of the price-support programme and the direct subsidy programme to provide the means of achieving the level of returns indicated by the formula. However, it is up to the provincial pricing authorities, through whatever method they have for establishing prices, to obtain returns for milk through the price support programme sufficient to meet the formula's target returns. The price support programme sets minimum prices for the designated industrial milk products mentioned earlier. In setting its minimum prices, the Federal Government must allow for reasonable manufacturing and marketing margins for processors, or producers cannot achieve, whether through negotiations or otherwise, the target returns indicated by the industrial milk formula.
35. Producers who overproduce their quotas are required to pay an export assistance levy to the Canadian Dairy Commission. Such levy is established to offset any losses created by having to export the products made from such milk at below Canadian domestic prices.

Plant Supply Quotas

36. Plant supply quotas originated in Ontario in 1970 as a means of allocating the residual supply of industrial

milk among the traditionally surplus products manufactured from such milk, namely, butter, skim milk powder and cheddar cheese. When the Ontario Milk Marketing Board was seeking a method of marketing industrial milk from its producers it held discussions with processors of alternative marketing methods. The two which emerged as the most likely alternatives were selling by auction or supply by quota. While the larger plants seemed to favour the auction method, the smaller plants feared for their milk supply. The quota supply method was finally agreed upon by the processors, the producers and the government.

37. Essentially, each existing processor of industrial milk products, i.e. butter, skim milk powder, evaporated and condensed milk and cheddar cheese, was allocated a quota equal to his previous year's receipts of milk. The Board guaranteed to supply each processor with the same percentage of milk relative to the total supply in his region that his quota was of the total quota in his region.⁽²⁶⁾ If his quota was 10% of the total quota in his region he was allocated 10% of the supply in his region available for manufacture into the industrial milk products mentioned. These plant supply quotas were negotiable between plants, to assist in structural adjustment in the processing industry and to allow flexibility between plants. They also provided a guarantee that a processor who acquired another processing business or plant by purchase would receive the milk supply associated with the purchased plant. One of the brakes on structural adjustment had been the inability of a selling processor to guarantee that the farmers would not ship to some other plant after the sale had been completed. This resulted in financial offers for small processing facilities too low to permit the owners to retire their debts and have any equity left for themselves. It was, in most cases, the supply of milk, rather than the small plant with outdated facilities, which attracted the purchasers.

From the Farmer's Viewpoint

38. If a person wishes to become a dairy farmer in Ontario by producing milk for sale there are a number of steps he must take:
 1. He may purchase an existing dairy farm with facilities for cattle housing and milk production and handling which meet the Provincial Government's requirements from a hygienic standpoint, or he may purchase any kind of farm and construct or renovate to provide such facilities. He cannot sell milk until he has been authorized to do so by a Fieldman of the Ontario Ministry of Agriculture and Food.
 2. He must apply to the Ontario Milk Marketing Board for a licence to market milk, which licence will be issued when the Board has been informed by the Ministry that the production facilities have met its requirements.
 3. He should acquire one of two kinds of quota, or he may acquire some of each kind. If he does not, he can only expect to receive from the Board the world market price for his milk

⁽²⁶⁾ To avoid excessive transportation costs, the province was divided into three regions. Little or no industrial milk flowed across the regional boundaries at the time the regions were established.

shipments, and this is a price with which he could not survive under Canadian cost conditions.

The two kinds of quota are: (a) Group 1 Pool Quota ("fluid quota") — which designates his share of the fresh fluid milk market, and is a daily quota; and (b) Marketing-sharing Quota — which designates his share of the industrial or manufacturing milk market, and is an annual quota. Over 90% of existing dairy farmers in Ontario have both kinds of quota.

Group 1 Pool quota remains fixed, subject to increases or decreases at the producer's option or as referred to below. However, something less than 100% of that quota qualifies for the fluid pooled price, inasmuch as there is more quota in the hands of producers than the volume of sales to consumers at fluid milk prices. The OMMB issues more quota than sales to permit producers the margin to produce at a level sufficient to offset the underproduction of some of their colleagues. Producers are allowed to produce 20% under their Group 1 Pool quota without penalty. However, if they produce less than 80% of their total fluid quota for two consecutive months their quota is reduced so that the average production of those two months becomes 80% of their reduced quota. Production which exceeds the requirements of the fresh fluid market is directed by the OMMB to industrial milk plants, and thereby becomes industrial milk. The producer would be paid for this milk at world price levels, by having an export levy assessed against it, unless the producer protected himself by acquiring a Market-share quota to cover that volume. With a Market-share quota, he would be paid the industrial pooled price.

4. He could acquire such quota in the following ways:

(a) with the farm, provided he purchased it as a going concern; i.e. land, buildings, herd and quota.

(b)(i) before 1976, he could purchase Group 1 Pool or "fluid" quota through private transaction, subject to OMMB approval, a 25% transfer assessment, and a maximum holding of 10,000 pounds. The transfer assessment provided that for each 100 pounds (or litres) disposed of by the seller, the purchaser could only acquire 75 pounds, the other 25 pounds being retained by the OMMB. The quota accumulated through the transfer assessment is used to encourage producers who produce only industrial milk to upgrade their production facilities in order to quality to ship fluid grade milk. When they qualify, they are issued free fluid quota by the OMMB based upon their historical production levels allocated in equal installments over a period not to exceed four years and one day. This is called the Graduated Entry Program: i.e. entry into the Group 1 or fluid Pool.

(ii) from 1976 all fluid quota relinquished by producers was sold to the OMMB at \$16.00 per pound. It was then reallocated to producers after deductions had been made for the Graduated Entry Program on a first-come first-served basis up to a maximum for any one producer of 10% of his existing quota.

(c) from the beginning of MSQ in 1970, such quota has been freely negotiable among producers, subject to OMMB approval of each transaction.

(d) beginning in March 1980, all quota (both fluid quota and MSQ) will be transacted through a provincial quota exchange operated by the OMMB. The only exceptions are in the case of on-going operations changing hands, and transfers within the immediate family. In these instances, the transfers may be made directly between the parties concerned, and no transfer assessment will be taken by the Board.

39. In order to permit a broader sharing of fluid quota among producers, the OMMB does not permit the transfer to a producer of any fluid quota which when added to what he already holds would exceed 75% of his normal production.
40. A new producer, having purchased a farm, brought it up to qualifying standards, and having applied for an received a licence to produce milk from the OMMB, is in a position to acquire a her and quota. In march 1980 he will be able to purchase his quota requirements on the monthly quota exchange operated by the OMMB, whether he does it all at once or in stages to match his growth in production. If he has purchased an on-going operation, including the herd, or if he has purchased from a member of his immediate family, he can acquire the quota direct without going through the exchange.
41. Once in production, he will sell his milk to his marketing board, the OMMB, to market it for him. In fact the OMMB buys the milk from him at his farm, and sells it to the processors. In contracts with milk transporters as agents to pick up the milk at the farm and deliver it to a designated processing plant. The farmer may not know the plant destination of his milk, and he may not care for he is paid the same wherever it goes. The processor pays the OMMB on the basis of the end use of the milk. Prices vary from fluid milk use (the highest priced category, called Class 1) to that used for the manufacturing of butter and skimmilk powder (called Class 5). The returns from Classes 1 and 2, which are fluid uses, are pooled and the pooled or average price is paid to each producer in relation to his fluid quota, modified by factors for hygienic and compositional quality, less OMMB costs for administration of the Board and for promotion and advertising, and less a pooled transportation charge. Classes 3 to 5 are industrial use categories, and returns from the sale of milk used in these categories are pooled, and this pooled price is paid to each producer in relation to his MSQ, modified by factors for hygienic and compositional quality, less OMMB costs, and less a pooled transportation charge.

42. In addition, the OMMB deducts from MSQ milk export levies and forwards them to the Canadian Dairy Commission to offset the difference between the domestic returns for industrial milk and the returns from the export sale of industrial milk products which are excess to Canada's requirements. There are three levy rates: (i) A levy assessed on milk produced within the MSQ, called the "within-quota levy", used to export the excess skimmilk powder produced from milk within the quota; (ii) A levy on the extension of the MSQ called the "sleeve", which is known as the "contingency levy", and is used to export both the butterfat and skimmilk portion of milk, should part or all of the "sleeve" production be surplus to Canada's requirements; and (iii) A levy on milk produced over the MSQ and the "sleeve", called the "over-quota levy", and is used to sell the total of the butterfat and skimmilk powder portions of the milk supply that is surplus to Canada's needs.

The purpose of the "sleeve", is to permit producers to market milk within their MSQ which exceeds their share of domestic requirements in order to offset the shortfall in the production of other producers. Current levy rates are: within-quota ' \$1.00/cwt. (\$2.27/hl); contingency ' \$1.30/cwt. (\$2.95/hl) of which .30/cwt. (.68/hl) is refunded on that portion of MSQ production in the "sleeve" which, by the end of the dairy year, is determined not to be surplus to Canada's requirements; over-quota ' \$8.00/cwt. (\$18.15/hl).

43. The producer can expect to receive monthly from the Canadian Dairy Commission a subsidy cheque, currently at the rate of \$2.66/cwt. (The export levy has already been deducted by the Board from its payment for the MSQ milk). The only limitation on subsidy payments is that such payments will not be made for milk produced outside of MSQ, nor on more than 900,000 pounds of MSQ milk per individual producer. However a two-person partnership made up of active participants in the farm operation may have a maximum MSQ for subsidy purposes of 1,800,000 pounds of MSQ, and where a three-person partnership is involved, the maximum MSQ for subsidy purposes is 2,700,000 pounds.
44. On entering the milk production business the new producer will have had a visit from an OMMB Fieldman. He will have learned that his fluid milk prices are determined by a formula reflecting his costs of production, the buying ability of the consumer, and the general economic situation in Ontario. The formula is calculated by the Statistics Branch of the Ontario Ministry of Agriculture and Food, as an agency independent of both the producer and processor. The prices are determined from the formula by the OMMB and made effective through a regulation.
45. He knows that his industrial milk returns are determined by a formula which Agriculture Canada calculates and which the Canadian Dairy Commission uses to influence dairy product prices through price support/offer to purchase programs and to pay him a direct subsidy on his MSQ productions. The product support prices are made effective by milk price regu-

lations of his marketing board. In all cases pricing regulations are subject to appeal to a provincial government tribunal.

46. He knows that when the formula price moves up or down by a certain margin, in the case of both formulae independently changes in his returns from milk sales will be forthcoming.
47. He knows that if he underproduces his fluid quota by 20% for two successive months, his quota will be reduced to reflect the underproduction. He knows that if he underproduces his MSQ on the year by more than 85% his quota the following year will be reduced to reflect this. He knows that if he produces milk of inferior hygienic quality he will suffer a financial penalty in the form of a lower price, and risk being disqualified from producing for the market. He knows that if he produces milk of an inferior compositional quality, he will be paid less for his milk accordingly. He knows that if his management is high calibre, he can count on a steady, almost predictable income from his milk sales, and can plan and budget accordingly.

LIST OF SCHEDULES

- *1. "Milk Marketing in Ontario," by G.R. McLaughlin, March 6, 1972.
2. The Natural Products Marketing Act, 1934, S.C. 1934 (24 & 25 Geo. 5), c.57.
3. The Natural Products Marketing Act Amendment Act, 1935, S.C. 1935 (25 & 26 Geo. 5), c.64.
4. Reference re The Natural Products Marketing Act, (1936) S.C.R. 398
5. A.-G. B. C. v. A.-G. Canada, (1937) A.C. 377.
6. The Agriculture Prices Support Act, 1944, S.C. 1944, c.29.
7. The Agricultural Products Act, S.C. 1947, c.10.
8. Agricultural Stabilization Act, R.S.C. 1970, c.A-9.
9. An act to amend the Agricultural Stabilization Act, S.C. 1974-75, c.63.
10. Report of the Canadian Dairy Advisory Committee, 1965.
11. Canadian Dairy Commission Act, S.C. 1966, c.34.
12. The Farm Products Control Act, R.S.O. 1937, c.75.
13. The Farm Products Marketing Act, 1946, S.O. 1946, c.29.
14. The Milk Industry Act, 1957, S.O. 1957, c.70.
15. The Milk Act, R.S.O. 1970, c.273 or amended to 1978.
16. The Milk Amendment Act, 1979 (Ontario).
17. Summary of Principal Recommendations of the Ontario Milk Industry Inquiry Committee (1965).

- *18. "Ontario Milk Marketing System", by G.R. McLaughlin, August 14, 1975.
- *19. Description of the Canadian Milk Supply Management Committee and its purposes, the Agreement regarding Market Sharing Quota, and the Interim Comprehensive Milk Marketing Plan.
20. Agricultural Products Marketing Act, R.S.C. 1970, c.A-7, and the Ontario Milk Order S.O.R./70-519.
21. "Pricing Fluid Milk at the Farm Level (An explanation of Formula Pricing for Raw Milk from the Farm as practices in Ontario), O.M.M.B.
22. Milk Industry Act, S.B.C. 1956, c.28.
23. Descriptive material regarding the Returns Adjustment Formula.

*Schedules reproduced below

SCHEDULE 1 TO MR MCLAUGHLIN'S REPORT

MILK MARKETING IN ONTARIO

An Address to the Toronto Board of
Trade, on March 6, 1972, by
George R. McLaughlin, Chairman
The Ontario Milk Marketing Board

Farming has much in common with other kinds of industry. The production of food, whether of animal or vegetable origin, is still the basic resource industry. In our kind of economy, success in farming, as in most things, is based upon the knowledge and skills of the trade and is measurable in terms of living standards achieved. As a way of life, it continues to differ from that of urban people, but that difference is not nearly so great as it once was.

As a business, farming employs many of the same principles as urban business. It differs, however, in that the proprietor himself provides most of the capital, the management skills and much of the labour, and he puts these things to work in a production enterprise, which, in many ways, is a "factory without a roof".

One of the strengths of our kind of democracy has been the opportunities for and the success achieved by individual entrepreneurs. Farming has been and continues to be one of the major bulwarks against the ever-so-gradual movement towards a robot-like society, where a few push the buttons and the rest react. Within farming, dairying particularly has remained an individual entrepreneurial type of business, mostly, I suspect, because the returns to capital, management and labour have not been sufficient to attract corporate attention. Experiences in the United States and elsewhere have amply demonstrated this.

Since each of these dairy farming businesses, and there are over 20,000 of them in Ontario alone, are subject to the business decisions of their individual owner-managers, a major problem exists in attempting to have these decisions made with due consideration to their effect on the industry

as a whole. The individuals react to differing market situations on the basis of their individual skills, ambitions and resources. These are generally unknown on a collective basis, and it has been virtually impossible to estimate with any acceptable accuracy, when and to what extent any reaction to changing conditions might take place. As a consequence the use of market information as a basic consideration of the individual in his decision-making has not been nearly so significant a factor as the situation facing him as an individual on his own farm. In other words, farmers have been much more individual farm production oriented than overall market oriented.

Let us look at the effects of this on our dairy farming industry. In the case of the individual dairy farmer, the situation has worked much like this. A dairy farmer would decide he needed more income. Perhaps he wanted to send a son to college or take him into partnership, or perhaps he needed to offset the effects of inflation or simply cover the increasing costs of his business inputs. He could increase his income by three possible means. He could sell more produce at the same price. He could sell the same amount of produce at a higher price. He could reduce his costs of production to leave him a greater net. Since experience over the years has shown him as an individual that he has little influence on the price of the product he had to sell or on the cost of the things he needed to buy to carry on his business, he would invariably choose to increase his production. He would borrow part of the necessary capital required to increase his herd and facilities, and would have calculated his repayment on the basis of existing market prices. However, unknown to him, other individual dairy farmers would have been making the same decision, perhaps for different reasons. The cumulative effect of these individual decisions in the past has been an increase in total volume of milk beyond what could be sold at existing prices resulting in a reduction in price for all milk produced, and a lowering of the living standards of all dairy farmers. This kind of situation, of course, caused additional hardship for those involved in repaying borrowed capital used for generating more income because their living standards would be even more seriously reduced if they had to maintain their repayments at the former rates unless they could renegotiate their loans.

Over the years, the reaction of dairy farmers to these circumstances has been manifest in creating organizations which could take steps to minimize the uncertainties that plagued their operations. Milk production is a high cost industry, and this probably explains why dairy farmers have been leaders among farmers in organizing to provide some increase in security for their investment. Over the years they have learned, as did those in the professions and those in the factories, that some sort of legislative authority was required in order to protect their interests individually and collectively, with enough safeguards to assure that the public interest was adequately protected. The evolution of these organizational efforts brought forth the Milk Act in 1965, out of which was born the Ontario Milk Marketing Board.

The Board consists of twelve dairy farmer members elected by the dairy farmers in twelve regions of the province, plus a representative of the farmers who separate the milk on the farm and sell only the cream portion for butter-making. It is financed solely by the dairy farmers

and operates on less than 1 per cent of the farm value of the milk sold. It purchases all the milk from the dairy farmers and sells it to the processing industry, contracting with the transporters to move the milk from the farms to the processing plants via the most efficient routing. It is empowered to establish terms and conditions of sale to processors, including prices, which it does through a form of negotiation. It pools the returns it receives from the processors for payment to the dairy farmers so that they all share equitably in these returns in relation to the quality and quantity each sells to the Board.

The effect of the historically recurring cycle of over and under supply on the milk processing industry and, for that matter, on the segments of agriculture which provide the inputs for our dairy farming businesses also has been instability, with strained facilities and resources at one time, and unused facilities and wasted resources at another. The effect on the consuming public has been fluctuating supply and price. It is virtually impossible to measure the reduction in purchasing power during the lengthy and recurring periods of over-production and low returns, which have plagued our industry in the past, and the loss this represents to the rest of our economy. It is virtually impossible to measure the loss in increased efficiency of production which otherwise would have occurred had the farmers had the confidence and the money to invest more readily in new technological developments.

It can be said that one of the major objectives of the Ontario Milk Marketing Board is to improve producers' returns in a stable market — not a fixed market, but a stable market. This means that a way must be found to indicate to dairy farmers what the size of the market is at any given time, and to persuade them to consider the market when making on-the-farm decisions. Evolution of market quotas as a means of doing this has been going on since the mid-Thirties.

What is a market quota? It is really a share of the market for milk granted to each dairy farmer for his use while he remains in milk production, and it was based originally upon his most recent production experience. There are basically two distinct markets in this province and in this country. The first we call the fluid milk market, being the market for milk which is sold fresh in the liquid form. It requires a regular daily supply, so the quotas associated with this market are daily quotas. To assure a regular daily supply the milk used for this purpose is paid for at higher prices. Each qualified dairy farmer receives this top price on the volume of milk shipped in relation to his fluid milk quota. The total of the fluid milk quotas in the hands of the dairy farmers is established to bring forth the required amount of milk for the fresh liquid market.

The other market in Canada we call the industrial milk market, being the market for milk which is manufactured or processed into milk products like cheese, butter, milk powder, condensed milk, and many other products. Since these products are storable and are not required on a fresh daily basis, the quotas associated with this market are annual quotas. The total of the industrial milk quotas in the hands of dairy farmers is established to bring forth the required amount of milk for the milk product market within Canada and to satisfy our traditional export markets. A dairy farmer may hold either one or both kinds of quotas or no quota at all. He may overproduce his quota or

quotas. However, we have three price levels for milk — the highest price for fresh fluid milk covered by a fluid milk quota, a middle price for industrial milk covered by an industrial milk quota, and a lower price (based mostly on the world price) for milk produced over quota or without a quota. The latter is surplus milk which has to be exported in some form, and the costs of export are borne by the individuals who overproduce.

The overall effect of pricing in relation to available markets and having those markets identified for each producer is a form of supply management — i.e. managing the supply to meet market requirements. Milk quotas are market quotas, and are not as sophisticated supply management tools as production quotas. A milk quota does not prevent a dairy farmer from producing and marketing milk outside the quota if he decides he can compete at over-quota prices, whereas production quotas as used in some commodities prevent a farmer from selling any product produced over his quota.

A dairy farmer may expand or contract his business or his income by negotiating the purchase or sale of his quota from or to another dairy farmer. In this way, each dairy farmer's quota or share of the market is protected to a considerable extent from the activities of other dairy farmers, and he has a greater security for his investment than he has ever had before. When combining the effects of quotas of this nature with reasonable prices, greater stability in the marketplace occurs, opportunities for dairy farmers to invest in efficiency-increasing technology are enhanced, and one way or another this benefits everyone. Sometimes in the past, schemes have been tried to expand the market for milk by encouraging overproduction to keep the prices low. At other times, programs have been launched to try to short the market so that the prices to farmers would go up. The objective of the Ontario Milk Marketing Board is to have slightly more than enough milk supply so that we never go short, while at the same time eliminating the wide fluctuations in supply and price that have played such havoc with the industry over the years. In addition, we spend more resources than ever before to try to expand our markets, through promotion and advertising, improved marketing, product improvement and new-product development.

There is a lot of suspicion about marketing boards. Most of this seems to be a result of misinformation or lack of understanding, and stems largely from the legislative authority which allows them certain monopolistic powers. There is no question that monopolistic powers can be badly used, and that is why agricultural marketing legislation has a good deal of governmental involvement to protect the public interest. A study of the legislation reveals, however, that these powers granted to marketing boards are not greatly different and are certainly no more monopolistic than the legislative powers granted to labour unions and professional groups such as doctors and lawyers. The powers are necessary in an industry or a segment of society like factory labour or the professions or farming, made up as they are of hundreds and thousands of individuals. The question is whether there are sufficient safeguards against the abuse of such legislative power. We in the dairy farming business realize full well that our survival as individual entrepreneurs and as an organization depends upon how well we demonstrate our belief in the tenet — "Not just today, but tomorrow; not just for me, but everyone."

SCHEDULE 18 TO MR. MCLAUGHLIN'S REPORT

Address to the

1975 Summer Meeting
NATIONAL MASTITIS COUNCIL, INC.
Royal York Hotel, Toronto. August 14, 1975

ONTARIO MILK MARKETING SYSTEM

By: George R. McLaughlin, Chairman,
THE ONTARIO MILK MARKETING BOARD

Mr. Chairman, Visitors to Canada, Ladies & Gentlemen:

I appreciate the opportunity to participate in your 1975 Summer Meeting, and in particular to have been asked to make a few remarks about a topic which is close to my heart.

Ontario enjoys a rather unique system of milk marketing — not unique in the world, for it is very much a copy of the milk marketing systems in the United Kingdom — but unique in North America. All the milk produced for sale on the farms of Ontario can only be sold by the farmer to one buyer. All the milk produced in Ontario for sale to Ontario processors (whether they process it for fluid milk sales or manufacture it into dairy products) can only be purchased by processors from one seller. That buyer from the farmers and seller to the processors is The Ontario Milk Marketing Board.

It contracts with about 277 transporters to deliver the milk from 16,250 farmers to the plants of 184 processors. It establishes the prices which the processors will pay for milk they receive, and the rates to be paid transporters for delivering it. In 1974, it billed processors \$391.5 million for almost 5 billion pounds of milk, out of which it paid transporters \$20.1 million, retained \$2.5 million for administration of the marketing system and allied activities and \$1.7 million for market expansion efforts on behalf of milk and milk products, and paid the \$367.2 million balance to the producers.

The Ontario Milk Marketing Board is a milk producers' organization. Some call it a compulsory co-operative. Its policies are established by a Board of 13 Members, all of whom must be dairy farmers, and 12 of whom are elected by milk producers in their respective regions for four-year terms on a rotating basis. One Member is appointed by the Ontario Minister of Agriculture and Food to represent farm-separated cream producers who have an organization of their own. The appointee is usually their Chairman, and he provides an essential liaison function between the two organizations. The Board has a staff made up of 94 persons in head office; 17 marketing personnel in the field, whose primary functions are the assignment of farms to transporters, milk direction to plants, and discussions on haulage rates with individual transporters; 16 Fieldmen who assist producers with on-farm milk production problems and the interpretation of Board and Government policies; and 15 people handling the warehousing and sale of cheddar cheese. The chain of communications between the Board and producers is completed through the annual election by producers of 54 Milk Committees on a County and District basis. These Committees work closely with Board Members and Fieldmen in the two-way communication flow from

producer to Board and vice-versa, in the establishment of major Board policies, and in performing valuable public relations functions in their own areas.

The Board is financed totally by a check-off or licence fee which is deducted by the Board from processor payments before these are paid over to producers. The current administrative licence fee is 6¢ per cwt. on all milk. In addition, a deduction of 4½¢ per cwt. is made from fluid grade milk and 1¢ per cwt. from manufacturing grade milk for market expansion activities such as advertising, promotion, publicity, nutritional education, new product development and consumer research.

The Board is constituted under provincial marketing legislation, and in the public interest, its activities are subject to scrutiny by the Ministry of Agriculture and Food. In addition to its pricing authority, it has the statutory power to licence producers, to establish price pools, to set quotas, to appoint agents, to establish conditions of purchase and sale, to purchase milk to its own account for whatever purpose, among other things. Further, it operates for the industry two cheddar cheese exchanges in Ontario, and has the statutory authority to purchase or to sell cheese on these exchanges. It also owns two cold storage warehouses with a combined capacity of 17 million pounds of cheddar.

In its formal dealings with the various sectors of the industry, it deals through three statutory committees established under the legislation and regulations, known as the Advisory Committees to the Board for Milk, for Transportation and for Cheese. The Board tables all of its policies affecting the other sectors of the industry at the appropriate committee meetings for full discussion and possible amendment before implementation. In the event that anyone believes himself aggrieved by a Board decision, he may appeal the decision to a special tribunal within the Ministry of Agriculture and Food, known as The Milk Commission of Ontario. This is an appeal tribunal, not an arbitration board. Let me illustrate:

If the OMMB proposes to increase the price of milk used in any certain category or categories, it provides an agreed-upon term of notice to the processors. They have the opportunity then, through the Advisory Committee for Milk on a formal basis, and/or privately on an informal basis, to indicate their views on the appropriateness or otherwise of the Board's proposal. After giving due consideration to these representations as well as to all the available pertinent data bearing on the matter, the Board will make a decision and authorize a regulation to be filed establishing the new price or prices as of a specific date. The processors may choose to appeal this decision to The Milk Commission of Ontario (which they frequently do). The Commission then must decide whether the Board's decision is ill-advised or not. Since the Commission itself has no power to establish prices, it cannot determine what the price should be, but only whether the Board's price is or is not proper in the circumstances. If and when it decides against the Board, the Board must establish a new price.

In our experience to date, and we have over 20 years experience with arbitration prior to the Board's formation, this appeal mechanism is a much more flexible and satisfactory basis for establishing prices. It puts a good deal more responsibility into the approach by all parties, even

though the appellant may look upon it from the standpoint that he cannot lose, and thereby appeal more Board decisions than may appear reasonable.

In its pricing activities for fluid milk, the Board uses as a guide an economic formula which has been generally recognized and accepted by all in the industry. Target prices for manufacturing milk are now also established by formula, and are made effective by a combination of Federal Government product support prices and direct subsidy. The Ontario Milk Marketing Board is a member of the national federation of milk producer organizations, which we call Dairy Farmers of Canada. In this arena, we have been directly involved in the negotiations which led to the new pricing formula for industrial (manufacturing) milk, which we hope will result in greater pricing stability to that segment of our milk supply.

I mentioned that we have the statutory authority to establish quotas for marketing milk. We use fluid milk quotas to represent the requirements of our market for fluid grade milk, and these are provincial quotas. They are negotiable to allow milk producers to plan and carry out the needs of their own farm operations without undermining the operations of other producers. In many respects, the program is similar to some Class I Base Plans in the US. We use manufacturing (industrial) milk quotas to represent the national requirements of our industrial milk market. This is a national supply management program, but is administered by provincial milk marketing organizations within each province under a signed agreement between them and the Canadian Dairy Commission, a Federal Government agency. While quotas to share the manufacturing market (which we call Market-Sharing Quotas or MSQ) are negotiable between producers within a province in the same way as are fluid milk quotas, the movement between provinces is a block movement once each year based upon a utilization formula which was negotiated after the quota program began and is also now covered by signed agreement.

Our Grade A producers then have two quotas — a fluid quota to represent their share of the Class I market, and a market-sharing quota to represent their share of the industrial or manufacturing milk market — and they can adjust these to suit their on-farm circumstances. Our manufacturing grade producers have one quota only — that which indicates their share of our national market for milk products. These are market quotas, not production quotas. Any producer may overproduce his quota if he wishes, but he knows in advance that the returns for such over-production will be what we can get for his milk on the export market, less costs of export of the products involved.

We operate two basic price pools. With some geographical exceptions, all Grade A milk producers (holders of fluid quotas) receive the same pooled price for milk shipped within their fluid quotas, and all producers receive the same pooled price for milk shipped within their industrial milk quotas (MSQ). Any producer who does not hold a fluid quota, but wishes to do so and can qualify, can obtain such a quota by purchase from another producer or free from the Board on a gradual basis over a period not to exceed five years.

The Ontario Milk Marketing Board objective is to improve the income of milk producers and the market

stability for milk in order that their net returns for management, investment and labour will be equal to comparable enterprises.

In this connection then, our interests lie not only in the direction of pricing milk, but also in milk production input costs and on-farm efficiency. Our organization, representing, as it does, every milk producer in Ontario, is engaged in continued efforts to affect structural adjustment on our dairy farms within tolerable limits; to improve the format of and participation in Government and industry programs which will improve on-farm efficiency; to alert legislators and others to the problems of milk producers which they cannot individually or collectively resolve by themselves; to stimulate research in areas of greatest need, and to improve the image of the milk producer in the eyes of the public.

In co-operation with the Ontario Ministry of Agriculture and Food, and the Ontario Dairy Council, we share equally the financing of the operations of the Central Milk Testing Laboratory at Guelph, where every producer's milk is tested for butterfat for payment purposes, and also for protein and lactose. We are the sponsors of a major research study, just now reaching completion, into the implications for all interested parties of pricing milk on one or more components in addition to butterfat.

We have been interested in mastitis work at the University of Guelph for some years, and have contributed to the maintenance of a small control herd of dairy cows as well as to Dr. Newbould's work with the Coulter Counter. Our hope has been that a program might evolve for alerting herd owners to sub-clinical mastitis in their herds in time for them to take proper control measures — as well as to assure that good preventive programs are being employed on our dairy farms. You will be hearing more about this from the experts.

Milk producers in Ontario then operate a central selling agency for all milk, and set the prices which shall be paid; have quotas to designate the size of market for both fresh fluid milk and manufactured milk products; and receive pooled returns for the milk produced for each of these categories. The competition between producers is no longer based upon such milk marketing factors as who can make the best deal with the dairy. It is based upon production and management factors.

The efficiency of our cow population and of our dairy farm operators looms larger when the milk marketing factors have become uniform.

We can identify all kinds of challenges now and into the foreseeable future, which will keep us on our toes to provide the dairy farmer with the know-how, and get him to use it, that will be needed to meet the needs and competition for food.

Not the least of these challenges, and perhaps the greatest of them is that associated with the prevention and control of mastitis. We are determined to gain meaningful progress in this area, for we believe that the practical early identification and treatment of mastitis in a dairyman's herd together with a good preventive program can be a big step forward in helping the Board to achieve its objective of improving milk producers' incomes.

The kind of dairy industry we have into the future depends upon how we adjust to our markets for milk and

milk products. It also depends upon the efficiency of our dairy farmers—and of the animals they depend upon. Affecting that efficiency is the work you and others around

the world are doing in the realm of mastitis prevention and control. We need your talent and experience. Keep up the good work!

SCHEDULE 19 TO MR MCLAUGHLIN'S REPORT

CANADIAN MILK SUPPLY MANAGEMENT COMMITTEE

Function

To develop policy and administer a Supply Management program for industrial milk and cream under producer market quotas designed to balance production with market requirements.

Participating Agencies

The Canadian Dairy Commission is Signatory to the comprehensive Milk Marketing Plan on behalf of the Federal Government. Provincial Governments and Milk Marketing Agencies which represent producers in each province are participating Signatories to the Plan. The parties to this Agreement are:

On behalf of the Canadian Government

On behalf of the Govt. of P.E.I.

“ “ “ producers “ “

“ “ “ the Govt. of N.S.

“ “ “ producers “ “

“ “ “ the Govt. of N.B.

“ “ “ producers “ “

“ “ “ the Govt. of Quebec

“ “ “ producers “ “

“ “ “ the Govt. of Ontario

“ “ “ producers “ “

“ “ “ the Govt. of Manitoba

“ “ “ producers

“ “ “ the Govt. of Saskatchewan

“ “ “ producers “

“ “ “ the Govt. of Alberta

“ “ “ producers “ “

“ “ “ the Govt. of B.C.

“ “ “ producers “ “

- The Canadian Dairy Commission
- The Natural Products Mktg. Board
- The P.E.I. Milk Mkt. Sharing Quota Board
- The N.S. Dairy Commission
- The N.S. Milk Producers Assoc.
- The N.B. Dairy Products Commission
- The N.B. Milk Marketing Board
- The Agric. Mktg. Board of Québec
- The Federation of Milk Producers of Québec
- The Federation of Industrial Milk producers of Québec
- The Milk Commission of Ontario
- The Ontario Milk Marketing Board
- The Ontario Cream Producers Mktg. Board
- The Milk Control Board of Manitoba
- The Milk Control Board of Manitoba
- The Saskatchewan Milk Control Board
- The Saskatchewan Milk Control Board
- The Alberta Dairy Control Board
- The Alberta Dairy Control Board
- The Milk Board of British Columbia
- The Milk Board of British Columbia

How and When established

The Comprehensive Milk Marketing Plan is the result of close co-operation and consultation. A working party consisting of representatives of the industry and Governments developed the plan under the leadership of “Dairy Farmers of Canada”, the National organization of Canadian Milk producers. The plan was then finalized by the Canadian Dairy Commission and signed to take effect by Ontario and Quebec on December 1, 1970, and by Prince Edward Island on December 1, 1971. Alberta acceded to the Plan on April 1, 1972, Saskatchewan and Manitoba on July 1, 1972, and B.C. on October 1, 1973. New Brunswick and Nova Scotia acceded to the Plan on April 1, 1974.

Why Established

The purpose of the comprehensive Milk Marketing Plan is to manage the Canadian Milk Supply by means of market sharing quotas in order to provide a balance between the domestic supply of butterfat and the requirements of the Canadian market for butterfat in manufactured products plus commercial exports. These objectives are in support of the specific objectives of the Canadian Dairy Commission which are to provide efficient producers of milk and cream with the opportunity of obtaining a fair return for their labour and investment and to provide consumers with a continuous and adequate supply of Dairy products of high quality.

How the Canadian Milk Supply Management Committee functions

Under the Comprehensive Milk Marketing Plan, the Canadian Milk Supply Management Committee was formed to develop policies and co-ordinate and manage the system. The Management Committee consists of three representatives from each participating province, one of whom represents the provincial Government or Board, and two represent the provincial producer Boards or Federations, and three representatives of the Canadian Dairy Commission. The Canadian Milk Supply Management Committee is chaired by a Member of the Canadian Dairy Commission and meets every two months, usually in Ottawa.

Under the Plan, Signatory Agencies have (a) established market sharing quotas for individual producers under their jurisdiction and in accordance with policies established by the Canadian Milk Supply Management Committee, (b) administer the adjustment of quotas, and (c) the orderly transfer of quotas between producers; (d) Signatory Agencies collect directly, or indirectly, through factories, such levies as are determined by the C.D.C. from market payments of all industrial milk and cream delivered by each producer under their jurisdiction, and (e) remit these levies and account for them monthly to the Canadian Dairy Commission.

The levy fixed by the C.D.C. is determined in relation to the cost of disposing of dairy products surplus to Canadian requirements in export markets. The rate of the levy on deliveries of industrial milk and cream by each producer up to the amount of his market share quota is fixed in relation to the cost of disposal of dairy products which are surplus to Canadian requirements. The rate of levy on deliveries in excess of a producer's market sharing quota is fixed at the greater of a minimum over quota rate which is set by this Committee and the cost of disposing of the products manufactured from whole milk in export markets.

A Secretariat of five staff members from the Signatories of Ontario, Québec, the Maritime provinces, the Western Provinces and the Canadian Dairy Commission has been charged with arrangements for Meetings, research, and the preparation of background material for policy proposals.

Provincial Government Input

Producer Milk Marketing Agencies in each participating province operate under provincial legislation. Upon accession to the Comprehensive Milk Marketing Plan, existing Agencies received the authority required to administer the provisions of the Plan at the provincial level. In provinces where such Boards were not in existence, they were formed for the purpose of administering the provisions of the Plan.

Federal Government Input

Federally the Canadian Milk Supply Management Committee draws on two principal sources of authority. First, the "The Canadian Dairy Commission Act", Chapter 34, 1966, provides in Section 12 for Marketing on a quota basis and for fixing and collecting of levies.

Secondly, under the Agricultural Marketing Act, Chapter A/7 of the Revised Statutes of Canada, 1970, and Section 2.2. the Federal authority to collect levies on

products which enter interprovincial and international trade is delegated to provincial Milk Marketing Agencies.

Financing

Provincial Milk Marketing Agencies are financed by producers through a deduction of a specific administrative charge made by the Agency from the market payment for all industrial milk and cream delivered by each producer under their jurisdiction. These revenues are used to cover expenditures for salaries, travel, office space, supplies and other administrative expenses.

The Canadian Dairy Commission meets expenses arising from its participation in the Canadian Milk Supply Management Committee from the regular appropriation of Parliament for the administration of the Commission.

Contact for Additional Information

Mr. Ellard Powers, Chairman
Canadian Dairy Commission
2197 Riverside Drive
Ottawa, Ontario
K1A 0Z2, Canada.
Telephone: 998-9490

Canadian Dairy Commission
September 30, 1975

March 16, 1973

Agreement in respect of Market Sharing and Subsidy Eligibility Quotas of producers living in one Signatory Province and shipping to another Signatory Province.

If a producer living in one Province wants to ship to a Province other than that to which he is now shipping, he applies to the Province in which he has been shipping to transfer his quota to the Province to which he wishes to ship.

This will then be treated as a transfer between the same producer and the quota will be cancelled by the Province to which he was shipping and transferred to the Province to which he will ship.

Any Subsidy Eligibility quota attached will move with the Market Sharing quota and both will be treated as a transfer not eligible for reallocation or transfer for twelve months after the transfer, except in the case of a catastrophe.

A producer electing to ship to one Province under the above arrangement may not again transfer his Market Share quota to another Province for a period of one year except with the approval of the Provincial Agencies concerned; and with respect to Subsidy Eligibility quotas, with the approval of the Canadian Dairy Commission.

Each Provincial Agency shall "lease" from its reserve any quota allotted to a non-resident producer delivering into that Province additional to the original basic allocation to that producer. If such a producer transfers his produc-

tion back into his Province of residence, his total Market quota is eligible for transfer. The amount of "leased" Market Share quota which has moved out of that Province in a Dairy year will be recorded by the Provincial Adminis- trating Agency.

The amount of Market Quota transferred interprovin- cially shall be reviewed annually. Any Market Quota trans- ferred interprovincially shall be released by the Province to which it was transferred and returned to the Provincial entitlement of the Province from which it was transferred.

CANADIAN MILK SUPPLY MANAGEMENT COMMITTEE.

AGREEMENT of Signatories

on

Interprovincial Adjustment of Market Sharing Quota and on Methods to Increase and Decrease the Total Market Sharing Quota.

A. Parties to this AGREEMENT are on behalf of:

Canada	—	The Canadian Dairy Commission
PARTICIPATING PROVINCES:		
P.E.I.	—	The Natural Products Marketing Board.
	—	The P.E.I. Milk Market Sharing Quota Board.
Quebec	—	The Agricultural Marketing Board of Quebec.
	—	The Federation of Milk Producers of Quebec.
	—	The Federation of Industrial Milk producers of Quebec.
Ontario	—	The Milk Commission of Ontario.
	—	The Ontario Milk Marketing Board.
	—	The Ontario Cream Producers' Marketing Board.
Manitoba	—	The Milk Control Board of Manitoba.
Saskatchewan	—	The Milk Control Board of Saskatchewan.
Alberta	—	The Alberta Dairy Control Board.
British Columbia	—	The Milk Board of British Columbia.

Objectives:

- B. 1. To provide a balance between the domestic supply of butterfat and the requirements of the Canadian market for butterfat in manufactured products plus normal exports.
2. To establish annually the Total Market Sharing Quota.
3. To achieve efficient utilization of Market Sharing Quota by adjusting annually all participating provinces to a common level of utilization of Market Sharing Quota.

P.E.I.	6.5
Quebec	196.8
Ontario	148.8
Manitoba	18.1
Saskatchewan	14.7
Alberta	34.1
British Columbia	11.5

4. The "Special Allotment" of Market Sharing Quota is: (in Million pounds of butterfat).

P.E.I.	0.5
Manitoba	1.5
Saskatchewan	0.9
Alberta	1.9

Definitions:

- C. 1. "Total Market Sharing Quota" (MSQ) is the sum of Market Sharing Quotas which is allocated to producers in Canada plus such quantities of MSQ available for distribution to producers by
2. "Provincial Market Sharing Quota" is the total of MSQ in the hands of producers in a province, plus the quantities of MSQ available for distribution and held by the Agency, or the Agencies, in that province at a given date.
3. The "Basic Entitlement" of Market Sharing Quota is as follows: (in Million pounds of butterfat).

5. "Performance Period" is a set of 12 consecutive months which by agreement of the Canadian Milk Supply Manage- ment Committee will be used to establish utilization.
6. "Canadian Average Utilization" is the percentage that industrial milk and cream shipments of all participating provinces is of the Total Market Sharing Quota.
7. "Utilization of a participating province" is the percent- age that industrial milk and cream shipments of a province are of the provincial Market Sharing Quota.

D. Adjustments to Industrial Milk and Cream Shipments

Industrial Milk and Cream Shipments of any Province may be adjusted:

- a) by the amount of the increase in fluid sales of each Province, if any.
- b) by an amount equal to 1% of Fluid sales of each Province.
- c) by an amount to take into account consequences of a catastrophe as this is understood in relation to quota maintenance requirements for individual producers.

E. Method of Interprovincial Adjustment

(Subject to Section "H")

1. Interprovincial adjustment of Market Sharing Quotas takes place annually, effective on the first day of April.
2. The Canadian average Utilization of MSQ and the Utilization of MSQ in each participating province are established annually.
3. The amount of MSQ which each province will have at April 1st each year will be the amount that will bring each province to the same utilization of the Total MSQ that has been established for the year beginning on that date.
4. Participating provinces whose utilization in the performance period is lower than the Canadian average will release the amounts of MSQ which will increase their Utilization at April 1st to the Canadian Average Utilization.
5. Participating provinces whose utilization in the performance period is higher than the Canadian average will receive the amount of MSQ which will lower their utilization at April 1st to the Canadian Average Utilization.

F. Increase or Decrease in the Total Market Sharing Quota.

(Subject to Section "I")

1. Any decrease or increase in the Total Canadian MSQ will take effect annually on the first day of April.
2. Interprovincial adjustment having been completed according to part "D", any increase or decrease that may be required in the Total MSQ will be achieved by applying the necessary uniform percentage increase or decrease to the provincial MSQ's at April 1st.

G. Allocation to Producers

Market Sharing Quota received by a province under this Agreement, will be allotted to individual producers on the basis of a program submitted to the Canadian Milk Supply Management Committee.

H. Special Provisions for Initial Interprovincial Adjustments

1. The first interprovincial adjustment will be for Quebec and Ontario on April 1st, 1974, and will be for 50% of the

amount indicated by the method set out in Part "D", even if this adjustment reduces a province below its basic entitlement.

2. On April 1, 1975, the provinces of Prince Edward Island, Quebec, Ontario, Manitoba, Saskatchewan, and Alberta, will be subject to interprovincial adjustment, and on April 1, 1977, the province of British Columbia will be subject to interprovincial adjustment; but on April 1, 1975, the provinces of Prince Edward Island, Manitoba, Saskatchewan and Alberta, and on April 1, 1977, the province of British Columbia, will be subject to only 50% of the amount indicated by the method set out in Part "D". When there is a decrease for provinces starting in adjustment, in no case will the reduction go below the basic entitlement plus special allotment that had been given to a province for its use.

3. The starting date of adjustment for Saskatchewan is April 1, 1975, except that if that province reverses its down trend in production of industrial milk and cream by the end of the dairy year 1974-75, its starting date of adjustment will be April 1, 1977.

I. Special Provisions for Increase or Decrease in Total Market Sharing Quota During the Initial Adjustment Period

If total market sharing quota is to be reduced, the procedures set out in Section "E" will be followed except that:

- a) At April 1, 1974, no province shall have its provincial MSQ reduced or further reduced below its basic entitlement of MSQ plus special allotment that has been given to a province for its use.
- b) At April 1, 1975, Quebec and Ontario shall be subject to the full reduction, even if this would have the effect of reducing a province below the basic entitlement, but the provinces of Prince Edward Island, Manitoba, Saskatchewan and Alberta starting in adjustment at April 1, 1975, and British Columbia starting in adjustment at April 1, 1977, would not be reduced below the basic entitlement plus special allotment that has been given to a province for its use.
- c) If at April 1, 1975, the starting date for interprovincial adjustment under Part "G" for Saskatchewan is determined to be April 1, 1977, no reduction in its provincial MSQ below its basic entitlement plus special allotment shall take place before April 1, 1978.

The Undersigned parties hereby accept the attached Agreement on Interprovincial Adjustment and on Methods to Increase and Decrease the Total Market Sharing Quota.

[signed on behalf of]:

Canadian Dairy Commission

Prince Edward Island Natural Products Marketing Board

The Prince Edward Island Milk Market Sharing Quota Board

The Agricultural Marketing Board of Quebec
The Federation of Milk Producers of Quebec
The Federation of Industrial Milk Producers of Quebec
The Milk Commission of Ontario
The Ontario Milk Marketing Board

CANADA

INTERIM COMPREHENSIVE MILK MARKETING PLAN

Whereas it is anticipated that appropriate agencies of several provinces and of Canada will agree to participate in the implementation of a Comprehensive Milk Marketing Plan, which would include the establishment and administration of market sharing quotas for producers of milk or cream to be used in the production of processed dairy products;

Whereas it is desirable that the adoption of a comprehensive plan be opened for ratification by appropriate agencies in all provinces;

Whereas the appropriate agencies of the provinces of Quebec and Ontario propose to establish and administer market sharing quotas forthwith;

Whereas the participation of the federal and provincial authorities is required to assure the adoption and implementation of a comprehensive plan.

Agreement

1. The signatory parties to this agreement convene to implement the provisions of the Interim Comprehensive Milk Marketing Plan.

Parties

2. The participating parties are the federal and provincial commissions and boards, producers boards and other agencies, signatories to this document.

Interpretation

3. In this Plan "Commission" means the Canadian Dairy Commission;

"comprehensive marketing plan" means a plan regulating the marketing of a product in a manner as determined by agreement, legislative provisions and orders or regulations, signed or adopted by the federal and provincial authorities;

"fluid milk producer" means a producer holding a fluid milk quota allocated by a provincial authority signatory, or any other producer, part or all of the milk or cream delivered by whom is used for fluid milk products; "fluid milk products" means milk or cream of any composition, chocolate drink containing milk, or buttermilk to be used in liquid form other than condensed or evaporated;

"industrial milk" means all milk delivered by industrial milk producers, and all milk delivered by fluid milk producers in excess of the quantity used for fluid milk products;

"industrial milk producer" means a producer who delivers milk or cream used solely for manufacture into processed dairy products;

"market sharing quotas" means a quota allocated by a provincial authority to a producer who markets milk or cream to be used in the production of any processed dairy product;

"milk" includes cream;

"processed dairy products" means any product, other than fluid milk products, made from milk;

"subsidy eligibility base" means a figure allocated by the Commission, as a base from which to calculate subsidy eligibility, to a fluid milk producer;

"subsidy eligibility quota" means a quota allocated by the Commission to an industrial milk producer.

Scope

4. The Plan applies in each province concerned to

- (a) subject to paragraph (b), fluid milk producers and industrial milk producers, and
- (b) all producers of all other provinces concerned shipping milk to the said province
 - (i) who are not under a provincial marketing plan of the province in which the milk is produced, or
 - (ii) who are subject to exception to the provisions of said provincial plan,

when such producers agree to conform, and conform to the provisions of the provincial plan, order, rules, directives, or decisions of the authorities of the province to which the said milk is shipped or when they are subject to regulations adopted pursuant to a delegation of authority granted under the Canada Agricultural Products Marketing Act.

Establishment and Adjustment of Market Sharing Quotas

5. The provincial agencies signatory to this agreement agree to establish market sharing quotas for producers under their jurisdiction in accordance with the provisions of section 6.

6. (1) In the case of an industrial milk producer holding a subsidy eligibility quota the market sharing quota shall be based on the greater of his deliveries in the twelve months from April 1, 1969 to March 31, 1970 or his subsidy eligibility quota at the time of establishment of the market sharing quota.

(2) In the case of an industrial milk producer not holding a subsidy eligibility quota the market sharing quota shall be based on his deliveries in the twelve months from April 1, 1969 to March 31, 1970.

(3) In the case of a fluid milk producer holding a subsidy eligibility base the market sharing quota shall be based on the greater of his deliveries in the twelve months from April 1, 1969 to March 31, 1970 or his subsidy eligibility base at the time of establishment of market sharing quotas, minus a figure calculated under a formula agreed to by the parties representing the quantity of milk or cream delivered by him in the said twelve month period and used for fluid milk products.

(4) In the case of a fluid milk producer not holding a subsidy eligibility base the market sharing quota shall be based on his deliveries in the twelve month period from April 1, 1969 to March 31, 1970 minus a figure calculated under the formula mentioned in subsection (3)

(5) If a producer was not in milk or cream production as of April 1, 1969, and does not hold a subsidy eligibility quota or base at the commencement date of the application of market sharing quotas, his annual production for the purpose of establishing a market sharing quota shall be calculated under a formula agreed to by the parties.

7. Market sharing quotas may be adjusted in accordance with procedures and provisions agreed to by the parties either by the transfer of a quota in whole or in part from one producer to another or with respect to adjustment in the total existing market sharing quotas.

Assessment for Cost of Surplus Disposal

8. A levy, toward the cost to the Commission of disposing of dairy products surplus to Canadian requirements shall be made by or on behalf of each producers board from the market payment for all industrial milk delivered by each producer under the jurisdiction of each provincial authority and the amounts as assessed remitted by the producers boards to the Commission.

9. In lieu of the Commission collecting a levy directly from producers holding subsidy eligibility quotas, or bases by means of holdbacks from subsidy payments to them, the Commission hereby designates each signatory producers board as its agent, and on its behalf, to collect such levy from such producers by means of deductions from the market payments to them and the producers boards hereby accept such designation.

10. here shall be one rate of levy on deliveries of industrial milk by each producer up to the amount of his market sharing quota and another rate on his deliveries in excess of his market sharing quota, both rates to be as specified by the Commission. All deliveries by a producer who does not hold a market sharing quota shall be considered to be in excess of market sharing quotas.

11. The amounts accrued from the levy on deliveries up to market sharing quotas shall be forwarded by each producers board to the Commission at the end of each month. The amounts accrued from the levy on deliveries in excess of market sharing quotas shall be forwarded to the Commission as arranged between it and the producers boards.

12. auditors or other persons employed, or designated by, the Commission are empowered to examine the books, records and accounts of the producers boards or persons

acting on their behalf, in so far as they concern the provisions of the Plan.

Orders and Regulations

13. Subject to the provisions of section 15, no amendments to any Order or Regulations bearing on the provisions and purposes of the Plan shall be made by any signatory party without prior notification to the other signatories and their concurrence that such amendment or modification does not contravene the purposes and provisions of the Plan.

14. Subject to the provisions of section 15, no Order or Regulation not conforming to the Plan shall be adopted or approved by any of the signatory parties.

Duration and Coming into Force

15. (1) The plan shall come into force on December 1, 1970.

(2) This Interim Plan may, with the concurrence of the signatory parties, be replaced by a Plan open to adherence by the appropriate agencies of all provinces.

(3) Any party may withdraw from the Plan or any replacement thereof

(a) as of the first day of April of any year by giving notice in writing to the other parties prior to the thirty-first day of March of the preceding year, or

(b) on the failure of any other party to carry out any of the terms of the agreement and Plan.

Management and Co-ordination Committee

16. (1) A Management and Co-ordination Committee is formed and shall consist of three representatives of each province, one of whom shall represent the provincial government board and two of whom shall represent provincial producer boards, and three representatives of the Commission under the chairmanship of a member of the Commission.

(2) The Committee shall meet at the request of the Chairman or of any member to consider any matters concerning the operation of the Plan.

Dated at Ottawa, this 14th day of January 1971.

The Canadian Dairy Commission

[signatures — original and on accession — omitted]

	<u>Date of Entry</u>	<u>First Year of Adjustments</u>
P.E.I.	December 1, 1971	April 1, 1975
Nova Scotia	April 1, 1974	April 1, 1977
New Brunswick	April 1, 1974	April 1, 1977
Quebec	December 1, 1970	April 1, 1974
Ontario	December 1, 1970	April 1, 1974
Manitoba	July 1, 1972	April 1, 1975
Saskatchewan	July 1, 1972	April 1, 1975
Alberta	April 1, 1972	April 1, 1975
British Columbia	October 1, 1973	April 1, 1977

This Agreement dated the day of 1974 between:

The Canadian Dairy Commission

The Ontario Milk Marketing Board

The Milk Commission of Ontario

The Ontario Cream Producers' Marketing Board

Prince Edward Island Milk Market Sharing Quota Board

Prince Edward Island Natural Products Marketing Board

Alberta Dairy Control Board

Nova Scotia Dairy Commission

all parties of the First Part

and

New Brunswick Marketing Board

New Brunswick Dairy Products Commission

party of the Second Part

Whereas with a view to the implementation of a Comprehensive Milk Marketing Plan several of the parties of the First Part entered into a Plan Agreement at Ottawa on the 14th day of January 1971.

And Whereas from time to time others of the First Part have entered into the said Plan Agreement upon terms and conditions agreed to by all parties of the First Part.

And Whereas the part of the Second Part desires to become a party to the said Plan Agreement upon the understandings hereafter set out and the parties of the First Part have agreed as follows:

1. New Brunswick fluid milk producers do not hold either a subsidy eligibility base or quota and consequential amendments are necessary, to wit:

References to "Subsidy Eligibility Quota" shall be read as "Subsidy Eligibility".

2. (1) The Plan Agreement as it affects the New Brunswick Milk Marketing Board shall come into force on the 1st day of April 1974 being the date agreed upon between the Canadian Dairy Commission and the party of the Second Part.

(2) Notwithstanding paragraph (1) of this section the provisions of section 8 of the Plan Agreement shall take effect on and from the 1st day of August, 1974.

3. In the case of an industrial milk producer his Market Share Quota shall be the greater of his deliveries in the 12 months from April 1, 1973 to March 31, 1974 or the Subsidy Eligibility held by him as of March 31, 1974 and subsection 1 of section 6 of the Plan Agreement as it affects the Second Part is hereby amended to give effect to this understanding.

4. Subsection 2 of section 6 of the Plan Agreement is presently deemed inapplicable because in the absence of a Subsidy Eligibility Quota entitlement a producer's Market Share Quota shall be established pursuant to subsection 1 of section 6 as amended above.

5. Subsection 3 of section 6 is presently deemed inapplicable in the absence of subsidy eligibility bases or quotas.

6. Subsection 4 of section 6 of the Plan Agreement as it affects the Second Part shall be presently deemed to read as follows:

(4) In the case of a fluid milk producer the market sharing quota shall be based on his deliveries in the twelve month period from April 1, 1973 to March 31, 1974 minus a figure calculated under a formula agreed to by the parties hereto as representing the quantity of milk or cream delivered by him in the said twelve month period and used for fluid milk products, subject to such a fluid milk producer holding a minimum market sharing quota equivalent to 10% of the quantity of milk so delivered and used for fluid sales.

7. Subsection 5 of section 6 of the Plan Agreement as it affects the Second Part shall be deemed to read as follows:

"A new producer shall be allocated a Market Sharing Quota in accordance with the rules of the Second Part agreed to by the Canadian Dairy Commission"

8. The Second Part agrees to become a party to the Plan Agreement of 14 January 1971 as amended and subject to the above noted amendments relative to New Brunswick and further agrees to the provisions of the said Plan Agreement in so far as they relate to the previous signatories now forming the Party of the First Part. In Witness Whereof the Parties of the First and Second Part have severally executed this Agreement.

[signatures omitted]

This Agreement dated the day of May 1974 between:

The Canadian Dairy Commission

The Ontario Milk Marketing Board

The Milk Commission of Ontario

The Ontario Cream Producers' Marketing Board

Prince Edward Island Natural Products Marketing Board

Prince Edward Island Milk Market Sharing Quota Board

Alberta Dairy Control Board

all parties of the First Part

and

The Nova Scotia Dairy Commission

party of the Second Part

Whereas with a view to the implementation of a Comprehensive Milk Marketing Plan several of the parties of the First Part entered into a Plan Agreement at Ottawa on the 14th day of January 1971.

And Whereas from time to time others of the First Part have entered into the said Plan Agreement upon terms and conditions agreed to by all parties of the First Part.

And Whereas the party of the Second Part desires to become a party to the said Plan Agreement upon the understandings hereafter set out and the parties of the First Part have agreed as follows:

1. Nova Scotia fluid milk producers do not hold either a subsidy eligibility base or quota and consequential amendments are necessary, to wit:

References to "Subsidy Eligibility Quota" shall be read as "Subsidy Eligibility".

2. (1) The Plan Agreement as it affects the Nova Scotia Dairy Commission shall come into force on the 1st day of April 1974 being the date agreed upon between the Canadian Dairy Commission and the party of the Second Part.

(2) Notwithstanding paragraph (1) of this section the provisions of section 8 of the Plan Agreement shall take effect on and from the 1st day of June, 1974.

3. In the case of an industrial milk producer his Market Share Quota shall be the greater of his deliveries in the 12 months from April 1, 1973 to March 31, 1974 or the Subsidy Eligibility held by him as of March 31, 1974 and subsection 1 of section 6 of the Plan Agreement as it affects the Nova Scotia Dairy Commission is hereby amended to give effect to this understanding.

4. Subsection 2 of section 6 of the Plan Agreement is presently deemed inapplicable because in the absence of a Subsidy Eligibility Quota entitlement a producer's Market Share Quota shall be established pursuant to subsection 1 of section 6 as amended above.

5. Subsection 3 of section 6 is presently deemed inapplicable in the absence of subsidy eligibility bases or quotas.

6. Subsection 4 of section 6 of the Plan Agreement as it affects the Nova Scotia Commission shall be presently deemed to read as follows:

(4) In the case of a fluid milk producer the market sharing quota shall be based on his deliveries in the twelve month period from April 1, 1973 to March 31, 1974 minus a figure calculated under a formula agreed to by the parties hereto as representing the quantity of milk or cream delivered by him in the said twelve month period and used for fluid milk products, subject to such a fluid milk producer holding a minimum market sharing quota equivalent to 10% of the quantity of milk so delivered and used for fluid sales.

7. Subsection 5 of section 6 of the Plan Agreement as it affects the Nova Scotia Dairy Commission shall be deemed to read as follows:

"A new producer shall be allocated a Market Sharing Quota in accordance with the rules of the Nova Scotia Dairy Commission agreed to by the Canadian Dairy Commission"

8. The Nova Scotia Dairy Commission agrees to become a party to the Plan agreement of 14 January 1971 as amended and subject to the above noted amendments relative to Nova Scotia and further agrees to the provisions of the said Plan Agreement in so far as they relate to the previous signatories now forming the Party of the First

Part. In Witness Whereof the Parties of the First and Second Part have severally executed this Agreement.

[signature omitted]

March 3 1977

Canadian Milk Supply Management Committee

Agreement of Signatories
on

Interprovincial Adjustment of
Market Sharing Quota and on Methods
to Increase and Decrease the Total
Market Sharing Quota

A. Parties to this AGREEMENT are on behalf of Canada — The Canadian Dairy Commission

Participating Provinces:

Prince Edward Island

- The P.E.I. Marketing Board
- The P.E.I. Milk Market Sharing Quota Board
- The P.E.I. Milk Commission

Nova Scotia

- The Nova Scotia Dairy Commission

New Brunswick

- The New Brunswick Milk Marketing Board
- The New Brunswick Dairy Products Commission

Quebec

- La Régie des marchés agricoles du Québec
- La Fédération des producteurs de lait du Québec
- La Fédération des producteurs de lait industriel du Québec

Ontario

- The Milk Commission of Ontario
- The Ontario Milk Marketing Board
- The Ontario Cream Producers' Marketing Board

Manitoba

- The Manitoba Marketing Board
- The Manitoba Milk Producers' Marketing Board

Saskatchewan

- The Milk Control Board of Saskatchewan

Alberta

- The Alberta Dairy Control Board

British Columbia

- The Milk Board of British Columbia

B. Objectives

1. To provide a balance between the domestic supply of butterfat and the requirements of the Canadian Market for butterfat in manufactured products plus exports.
2. To establish at least annually the Total Market Sharing Quota.
3. To achieve efficient utilization of Market Sharing Quota by adjusting annually all participating provinces to a common level of utilization of Market Sharing Quota.

C. Definitions

1. "Total Market Sharing Quota" (M.S.Q.) is the sum of "Estimated Domestic Requirements", an appropriate "Sleeve", and any additional amounts required for implementation of Clause D2.
 2. "Estimated Domestic Requirements" is the amount of butterfat calculated on the basis of a full dairy year which is estimated to be required from Canadian production for meeting market requirements for industrial or manufactured dairy products, and this amount shall be arrived at by taking account of expected exports, expected imports, the level of storage stocks of industrial or manufactured dairy products, and expected recovery of butterfat from standardization of fluid milk.
 3. "Sleeve" is the amount of the Total Market Sharing Quota that is in excess of "Estimated Domestic Requirements", less additional amounts required by Clause D2. It shall not at any time be less than 5% of or exceed 10% of the Total Market Sharing Quota.
 4. "Provincial Market Sharing Quota" is the total of Market Sharing Quota which under the terms of this Agreement are allocated to the producers in a province or which are available for allocation and held by the Agency or Agencies in that province at a given date.
 5. "Performance Period" is a set of 12 consecutive months which by agreement of the CMSMC will be used to establish utilization.
 6. "Canadian Average Utilization" is the percentage that "Industrial Milk and Cream Shipments" of all participating provinces are of the Total Market Sharing Quota.
 7. "Utilization of a Participating Province" is the percentage that "Industrial Milk and Cream Shipments" of a province are of the provincial Market Sharing Quota.
- "Industrial Milk and Cream Shipments" are amounts of "industrial milk" as defined in the Interim Comprehensive Milk Marketing Plan, recorded in a Performance Period and adjusted in amount according to the provisions of this Agreement.

D. Allocation of Market Sharing Quota

1. At the date of signing of this Agreement the amount of Provincial Market Sharing Quota for each province are as follows:

Market Sharing Quota Entitlement by Province

Market Sharing Quota Entitlement by Province

	mil lbs. B.F.	mil cwt of milk 3.5%
P.E.I.	6.825	1.950
Nova Scotia	4.477	1.279
New Brunswick	4.914	1.404
Quebec	177.547	50.728
Ontario	115.968	33.134
Manitoba	14.439	4.125
Saskatchewan	9.176	2.622
Alberta	24.840	7.097
British Columbia	11.463	3.275
CANADA	369.649	105.614

Source: 1977 Agreement on interprovincial adjustment & market sharing quotas and on methods to increase and decrease the total market sharing quota: Canadian Milk Supply Management Committee

[See Schedule 19 to Appendix 13 of this Report].

2. The existence of protected amounts of Provincial Market Sharing Quota as provided in this Agreement shall not result in lesser allocations of M.S.Q. to any province than would have been the result of the application of this Agreement in absence of these protected amounts.

The method of application of this provision shall be to this provision shall be to add to the estimate of requirements, prior to determination of the sleeve, the additional amounts of quota required to protect the M.S.Q. of any province.

3. By decision of the CMSMC meeting of March 9th and 10th, 1976, on April 1, 1976, a Special Allotment to Saskatchewan of 1 million lbs. butterfat was made. A further Special Allotment of up to 0.7 million lbs. butterfat is to be made on April 1, 1977, conditional on Saskatchewan's production level achieving at least 95% of the 1976-77 Market Sharing Quota allocation. Any shortfall below 95% of Saskatchewan's 1976/1977 Market Sharing Quota will be deducted from 0.7 million lbs. butterfat additional quota allotment.

E. Adjustment to Industrial Milk and Cream Shipments

1. Industrial milk and cream shipments of a province may be adjusted by an amount to take into account consequences of a catastrophe as this is understood in relation to quota maintenance requirements for individual producers.
2. Amounts produced by a province within the Sleeve or in excess of Provincial M.S.Q. shall not be included in "Industrial Milk and Cream Shipments" for purposes of calculating Utilization of a Participating Province.
3. Deliveries of farm separated cream used in the calculation of "Industrial Milk and Cream Shipments" of a Participating Province may for three years, beginning with April 1, 1977 adjustment and including the April 1, 1979 adjustment, be those made in the 12 months prior to the Performance Period, subject to the following:

- (a) If a province wishes to utilize this provision, its right to do so is subject to its providing to the CMSMC, information and analysis on the operation of the quota

system in that province respecting the occurrence of double counting that the Committee accepts as satisfactory to it.

- (b) The total of shipments of farm-separated cream used for calculation of utilization of a province shall not by reasons of the application of this provision, exceed the maximum amount that might otherwise be arrived at under the terms of Clause E2.
- (c) That provinces utilizing this provision shall not receive M.S.Q. from other provinces under Section F.

F. Method of Interprovincial Adjustment
(Subject to Section "I")

1. Interprovincial adjustment of Market Sharing Quotas takes place annually, effective on the first day of the dairy year.
2. The Canadian Average Utilization of M.S.Q. and the Utilization of M.S.Q. in each Participating Province are established annually.
3. The amount of M.S.Q. which each province will have on the first day of each dairy year will be the amount that will bring each province to the same utilization of the Total M.S.Q. that has been established for the year beginning on that date.
4. Participating provinces whose utilization in the Performance Period is lower than the Canadian average will release the amounts of M.S.Q. which will increase their Utilization on the first day of each dairy year to the Canadian Average Utilization.
5. Participating provinces whose utilization in the Performance Period is higher than the Canadian average will receive the amount of M.S.Q. which will decrease their utilization on the first day of each dairy year to the Canadian Average Utilization.

G. Increase or Decrease in the
Total Market Sharing Quota
(Subject to Section "J")

1. Any decrease or increase in the Total Canadian M.S.Q. will take effect annually on the first day of each dairy year or more frequently if required.
2. Interprovincial adjustment having been completed according to Section F on the first day of each dairy year, any increase or decreases that may be required in the Total M.S.Q. at that date or subsequently in that dairy year will be achieved by applying the necessary uniform percentage increase or decrease to the Provincial M.S.Q.

E. Allocation to Producers

Market Sharing Quota received by a province under this Agreement will be allotted to individual producers on the basis of a program submitted to the Canadian Milk Supply Management Committee.

I. Special Provisions for
Interprovincial Adjustments

Interprovincial movements of quota shall not reduce for any province, its Provincial share of estimated domestic require-

ments to less than 20% of its fluid sales in the Performance Period. This clause shall be reviewed during 1977, to determine its appropriateness in light of experience, for the interprovincial quota adjustment on April 1, 1978.

J. Special Provisions in the Event
of a Decrease in Total
Market Sharing Quota

If Total Market Sharing Quota is to be reduced the procedure set out in Section "G" will be followed except that:

- (a) The provincial share of estimated domestic requirements of Prince Edward Island will not be reduced if it is at or below the amount of 6.5 million lbs. of butterfat.
- (b) The Provincial Share of estimated domestic requirements of a province shall not be reduced to less than 20% of its fluid sales in the Performance Period. This clause shall be reviewed during the year 1977 to determine its appropriateness in light of experience for the quota allocation of April 1st, 1978.

K. Application of Agreement

The provisions of this Agreement will take effect as of the date of its signing, and shall replace the "Agreement of the Signatories on Interprovincial Adjustment of Market Sharing Quota and on Methods to Increase and Decrease the Total Market Sharing Quota" dated October 10, 1973. In the application of the provisions of the Agreement, the first interprovincial adjustment of quotas shall take place on April 1, 1978.

The undersigned parties hereby accept the attached Agreement on Interprovincial Adjustment of Market Sharing Quota and on Methods to Increase and Decrease the Total Market Sharing Quota.

The Canadian Dairy Commission
[signatures omitted]

APPENDIX 14

COOPÉRATIVE FÉDÉRÉE DE QUÉBEC

April 8, 1980.

Honourable Mr. Justice Hugh F. Gibson
Commission of Inquiry
P.O. Box 1268
Ottawa, Ontario
K1P 5R3

Dear Mr. Justice:

Pursuant to your request, I am pleased to send you with this letter, detailed explanations on production and disposal of dairy products in Canada, together with general comments on Canadian dairy industry and the operations of both fluid milk quota and industrial milk quota.

I hope that those details are clear and will give you all the information you wish. If there is any further explanation you will require, please do not hesitate in contacting me.

Yours very truly,

PHILIPPE PARISEAULT
Director —
Dairy Division.

PP/ml
Enclosure:1

PRODUCTION AND DISPOSAL OF SKIM MILK POWDER

Approximately one-third of the milk sold off Canadian farms is used in the "fluid" trade, for sale to consumers as liquid milk. The remaining two-thirds is processed into a wide range of dairy products — butter, cheese, skim and whole milk powder, evaporated and condensed milk, yogurt, etc.

With few exceptions, the production of processed products is in reasonable relation to the known market for them. The major exception is skim milk powder. It is a by-product of the manufacture of butter from whole milk. For each pound of butter made from the butterfat from milk, the drying of the residual skim milk yields two pounds of skim milk powder.

Earlier in the present century butter was made primarily from cream "separated" on the farm and delivered to creameries by farmers. The skim milk was fed, on the farm, to calves, pigs and poultry.

Over the ensuing period, and particularly since mid-century, dairy farming has become increasingly specialized in fewer and larger farm units (Note 1). With this, the practice of "separating" cream on farms has diminished, with a corresponding increase in deliveries of whole skim milk as a source of butterfat for butter production, and a corresponding increase in the production of skim milk powder. This is illustrated in the following data from Statistics Canada.

Production, Metric Tons

Year	Butter	Skim Milk Powder	% S.M.P. of Butter
1920	50,662	2,650	5.23
1930	84,255	6,490	7.70
1940	120,076	11,971	9.96
1950	118,598	24,160	20.37
1960	145,332	78,003	53.67
1970	148,684	164,399	110.56
1978	98,916	114,993	116.52

*Source: Statistics Canada

At present levels of production, approximately 40 per cent of the powder is used in Canada. The remaining 60 per cent must find an export market.

The domestic price is supported by the Canadian Dairy Commission as, previously, by the Agricultural Stabilization Board. That domestic price, normally, is above the price available in export markets, for two reasons. Canada, because of geography and climate, is a relatively high cost milk producing country compared, for example, to New Zealand where year-round grazing of cattle is possible. And, under periodic long supply conditions internationally, prices required to move product are low even by the standards of lower cost producing areas.

This necessitates, in the case of exports by private firms, a subsidy to the difference between the Canadian support price and the world price. In the case of exports by the C.D.C., it results in losses of similar dimensions between its buying and selling prices.

The levy imposed on the producers is calculated to cover the losses created by that difference between the support price and the world price. It does also apply to other dairy products such as evaporated milk, cheddar cheese, etc. That levy can be increased or decreased depending on the total cost of surplus disposal.

BRIEF COMMENTS ON THE CANADIAN DAIRY INDUSTRY

The objective of these brief comments is merely to explain some basic facts about our Canadian dairy industry.

TABLE 1: Milk: production and utilization

	Total production		Utilization of milk			
	of milk, 1978 (^{000 tons})	(%)	Industrial (%)	Fluid (%)	On farm (%)	Total (%)
P.E.I.	93.9	1.2	82.8	10.8	6.4	100.0
N.S.	171.2	2.3	30.2	65.1	4.7	100.0
N.B.	112.5	1.5	31.3	63.2	5.5	100.0
QUE.	2,989.7	39.2	74.0	20.8	5.2	100.0
ONT.	2,645.5	34.7	57.1	35.8	7.1	100.0
MAN.	323.0	4.2	55.2	34.3	10.5	100.0
SASK.	237.2	3.1	48.9	37.8	13.3	100.0
ALTA.	577.3	7.6	54.0	35.7	10.3	100.0
B.C.	464.6	6.1	32.3	60.2	7.5	100.0
CANADA	7,614.8	100.0	61.0	32.1	6.9	100.0

Overview

The dairy industry is a major part of Canada's agriculture. In 1978, receipts from the sale of dairy products at the farm level totalled \$1.75 billion, or 14.7% of all farm cash receipts. On a comparative basis, farm receipts from dairy products rank third in Canada, following beef (21.7%) and wheat (15.2%).

Production

At the production level, the dairy industry is most important in eastern Canada, Quebec and Ontario being responsible of 74% of all the milk produced in Canada.

From Table 1, it can be seen that the utilization of the production differs greatly from a province to another. For example, only 20.8% of the milk produced in Quebec goes for fluid purposes, whereas 60.2% is used in the fluid form in B.C.

Even if utilization is different from a province to another, the Canadian requirements are more or less the same each year:

TABLE 2: Uses of milk at the canadian level

Fluid milk	32%	
(whole, 2%, skim, chocolate)		
Industrial milk	62%	or as a % industrial milk
—Butter	32%	52%
—Cheddar cheese	12%	19%
—Specialty cheese	8%	13%
—Ice cream mix	6%	10%
—Concentrated whole milk	4%	6%
Consumed on farm	6%	
	100%	

The Canadian dairy industry basically consists of two separate sectors:

- the fluid milk sector which produces milk for consumption in fluid form; the control of fluid milk supplies is under provincial jurisdiction since little fluid milk has traditionally moved interprovincially.
- the industrial milk sector, which is under federal jurisdiction since a significant amount of processed milk products (butter, cheese, etc.) moves in interprovincial markets.

The fluid milk sector

Provincial milk boards or governmental agencies control the marketing of fluid milk in all provinces except Newfoundland. Several of these provincial milk boards are regulatory boards composed of government appointees (ex. B.C.); other are marketing boards whose members are elected from producer representatives (ex. Ontario).

The various provincial milk acts and their regulations generally provide for the licensing of producers and vendors, the control of milk quality, the establishment of minimum sanitary standards, the establishment of fluid milk prices and the classification of milk by utilization.

The control of supplies of fluid milk by fluid milk quotas is established at the provincial level according to the provincial consumption. For example, in Quebec, the fluid milk consumption reached 13 millions of hundredweights of milk in 1978. The amount of 13 x 125%: 16.25 millions of hundredweights of fluid milk quotas are to be released to the producers in 1979. Some quotas are emitted in excess so that the consumer can be guaranteed all his requirements. There is more milk produced during spring and summer, and this causes some uncertainties at the supply level.

During the year 1979, if we make the hypotheses that the consumption of milk was maintained at the same level as in 1978, the fluid milk producers were paid the Class I price for only 80% of their fluid milk quotas: 13/16.25: 80%. The rest of their milk was used and paid in the same manner as the milk produced by the industrial milk producers. This milk is called "surplus milk".

The surpluses of milk produced under fluid milk quotas, but not required by the fluid milk market, have to be produced under the market sharing quota (MSQ) released by the Canadian Dairy Commission (CDC). This "surplus milk" will then cause no harm to the supply management of industrial milk and will be eligible to the C.D.C. subsidy on industrial milk, as explained in the next chapter.

The following example, at the producer level, will help to understand:

A fluid milk producer of 300,000 lbs/year with a fluid milk quota of 150,000 lbs/year will be paid this way:

- volume paid at Class I price: 150,000 lbs x 80%: 120,000 lbs.
- volume of exclusion (milk considered as fluid milk used in Class II, like cream, etc.) 120,000 lbs x 3.4%: 4,080 lbs.
- remaining volume that has to be covered by a MSQ: 300,000 lbs — 120,000 — 4,080: 175,920 lbs.
- subsidized volume (at \$2.66/cwt) 175,920 x 95%: 167,124 lbs.
- volume in the sleeve 175,920 x 5%: 8,796 lbs.

This volume may be subsidized or not depending on canadian requirements. The specific levy on this volume is refundable if this milk is needed for canadian requirements.

- volume produced under export quota 175,920 x 3%: 5,277 lbs.

So, to recapitulate, the fluid milk producer receives:

lbs	x	market price	subsidy	gross revenue
120,000	x	16.04		19,248.00
4,080	x	11.56		471.65
167,124	x	11.56	2.66	23,765.03
8,796	x	11.56	2.66	1,250.79
5,277	x	11.56	1.33	680.20
305,277	lbs			\$45,415.67

His average gross revenue is \$45,415.67/3,052.77 cwt: \$14.88/cwt

The control of supplies by fluid milk quotas is established at the provincial level according to the provincial consumption. The surpluses of milk not produced under the fluid milk quotas have to be produced under the market sharing quota (MSQ) at the federal level.

The industrial milk sector: price fixing mechanisms

While the price of milk for fluid purposes is established at the provincial level, (it now ranges from \$18.58/cwt in B.C. to \$14.49/cwt in Manitoba), the price for industrial milk is obtained by a rather complex formula including indexation mechanism, support price for butter and powder, subsidy and levies.

The Figure 1 will help to understand the system (Annex I)

The Canadian Dairy Commission (CDC) guarantees a minimum market price for butter and powder, the latter being a by-product necessarily produced with butter. The market cannot go under the minimum price since the C.D.C. will buy any stock at the announced price. If we deduct the processors' margin from the guaranteed market price, we obtain the producers' market return which, along with the direct subsidy of \$2.66/cwt, makes the C.D.C. Target Support Price.

The Target Support Price is one important element of the system, since it is determined by the industrial milk returns adjustment formula, instituted in April 1975. This indexation formula is composed of three major components which are assigned weights:

- a cash input index: 45%
- a family labor earnings index: 35%
- a judgment factor: 20%

Whenever the formula indicates an increase of 2%, the C.D.C. has to adjust the Target Support Price according to the calculated increase.

In return to the implication of the federal government in the support of industrial milk price, the producers agreed to be responsible for the storage and the exportation of the skim milk powder. They are now paying an in-quota levy of \$1.00/cwt of milk because the C.D.C. is losing, on the average, 55¢ on each pound of skim powder sold in the international market.

When some milk is produced in excess of the MSQ of the producer, he must pay an over-quota levy of \$8.00/cwt on this milk. This levy is very high but provides a good tool to control overproduction, since there is no economic incentive to produce milk with such a levy.

The producer has a security margin of 5% of his MSQ (called the sleeve) before having to pay such a penalty. If the sleeve is needed for canadian requirements this milk will be paid like the rest of the industrial milk. If not needed, the milk produced within the sleeve will receive no subsidy and a supplementary levy of 25¢/cwt will be paid by the producer to take care of the extra export costs. Producers also have a 5¢/cwt levy instituted for the milk produced under the export quotas.

Since a good part of the butterfat sold in Canada comes from the skim-off of fluid milk, a 20¢/cwt levy is also collected on all deliveries of fluid milk.

Industrial milk sector: supply management

The C.D.C. agreed to support the industrial milk target price in as much as the producers agreed to control the milk supply. The federal government was not interested in subsidizing an unlimited amount of milk, but only the milk needed for Canadian consumption.

So, based on historical production made by each province in 1967-68, the C.D.C. allocated to each province the right to produce a certain volume of industrial milk called market sharing quota (MSQ), and each province distributed this quota amongst its producers.

TABLE 3: Market sharing quotas, including export quotas

	('000 kg of butterfat)	%
P.E.I.	3,270	2.0
N.-S.	2,089	1.2
N.-B.	2,291	1.4
QUE.	82,786	48.0
ONT.	54,073	31.0
MAN.	5,733	4.0
SASK.	4,490	2.6
ALTA.	11,583	6.7
B.-C.	5,345	3.1
CANADA	172,660	100.0

Producers were allocated their share of the canadian requirements based on their historical production level for the same year. The global amount of milk to be produced is decided by the Canadian Management Supply Committee, whose chairman is the president of the C.D.C. All provinces are represented at this Committee by their governmental agencies or producer marketing board.

The administration of the market sharing quotas at the provincial level is under the responsibility of the marketing boards (in Ontario, the O.M.M.B. and in Quebec, the Federation of Industrial Milk Producers). There are wide differences amongst the provinces in this regard, and the differences are tolerated by the C.D.C. inasmuch as they don't endanger the whole supply management system.

In Quebec, MSQ are sold and purchased at public auctions. In Ontario, bids and offers for MSQ are channelled by an exchange quota system working by telex. Elsewhere, MSQ are sold to and bought from the provincial marketing board at a nominal price. One has to consider that, in P.E.I., N.B., Manitoba, Sask. and Alta., not all the MSQ are fully used by the producers. That means that MSQ has a very low commercial value for producers in these provinces, whereas in Quebec, producers are ready to pay \$6. or \$7./lb of butterfat for the right of producing additional amounts of milk.

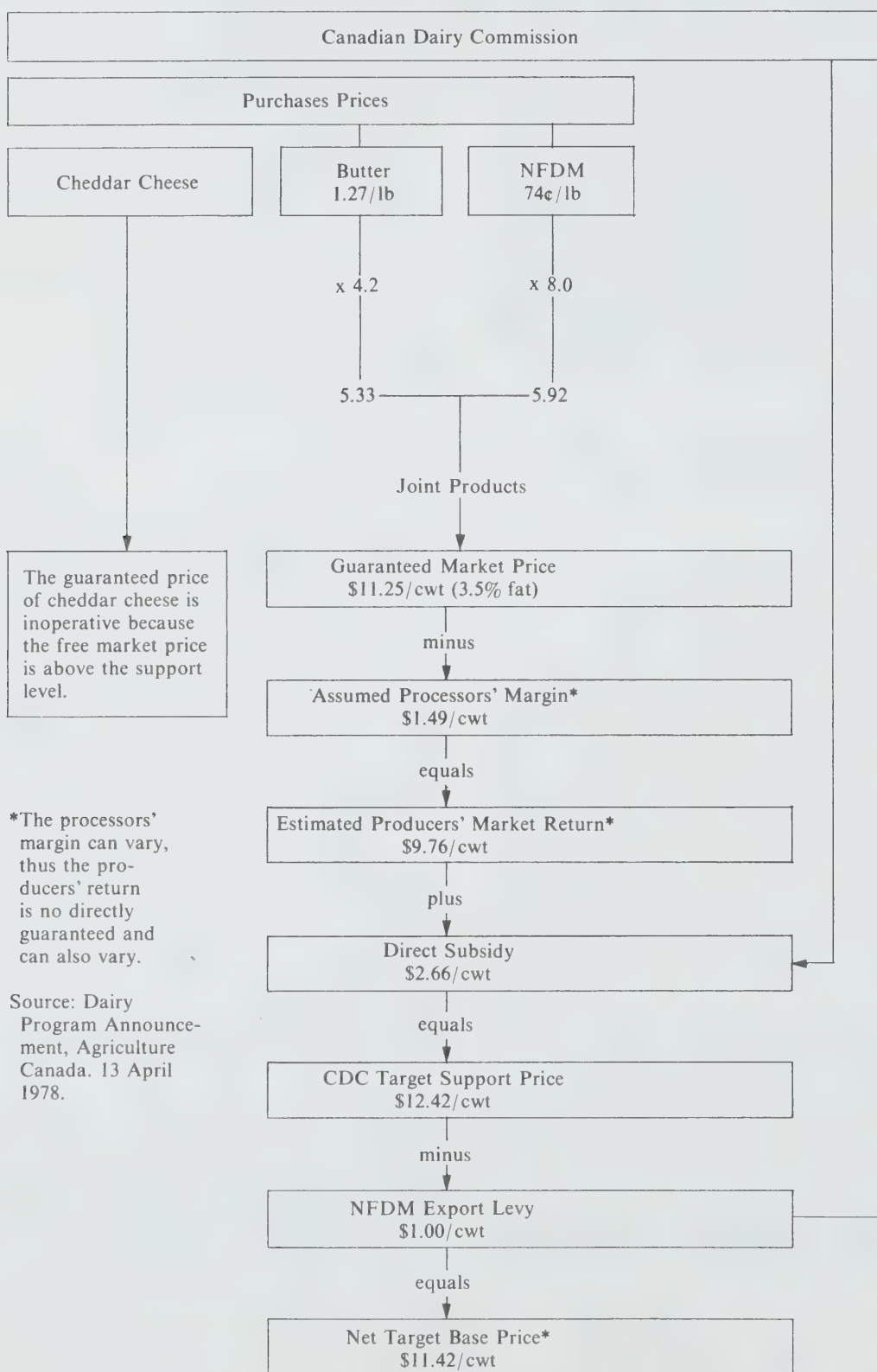
If we go deeper in the manner MSQ are managed, we will see that, for example in Quebec, a producer has to produce 90% of his MSQ, otherwise the Federation will give him only 111.1% of his actual production. These MSQ removed from the producer are put in reserve. Whenever a producer sells his quotas, the Federation takes 25% of the MSQ for the reserve. This reserve is used either to be distributed equally amongst actual producers or to attenu-

ate an eventual decrease of MSQ decided by the Canadian Management Supply Committee. A producer can lend to another producer a maximum of 20% of his MSQ for a period not exceeding two years, etc.

Again, all this regulation about MSQ is decided by producers at the provincial level and has to be approved by "La Régie des marchés agricoles" and finally by the C.D.C."

ANNEXE 1:

FIGURE 1: Canadian Industrial Milk Price Support System, April, 1, 1978



APPENDIX 15

This is Exhibit No. 9 filed on November 23rd 1979 at Ottawa, Ontario.

REVIEW OF THE CANADIAN DAIRY COMMISSION BACKGROUND, CREATION, POLICY AND OPERATIONS

Dr. G.A. Hiscocks assisted by L. Stephens October 12, 1979 Revised November 9, 1979

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SECTION I: HISTORICAL BACKGROUND

Introduction

1.1 The history of the Canadian dairy industry during the twentieth century is essentially a story of continuing fluctuations in supply, demand & prices. These ups and downs have involved not merely the production of milk on the farm but a whole series of features of the dairy industry. These features include:-

- i) total demand for milk and the demand for individual products (fluid milk, cheese, butter, concentrated milk, evaporated milk, ice cream mix and so on)
- ii) production factors such as costs, farm alternatives to milk production, surges in immigration and population movement, weather, labor supply
- iii) organization and policy of the industry groups eg distributors, processors, producers of fluid milk, of milk for butter, or for cream or for other products
- iv) prices received by farmers and processors and distributors
- v) extent and type of government intervention, assistance, laws and organizations.

The changes in these five groups of factors have had a fundamental impact on the behaviour, structure and legislation in this industry. The impact has been particularly significant for the new legislation and the new government authorised organizations over the last twenty years. A brief survey of these five groups of factors will help clarify the manner in which these influences have moulded the dairy industry into the shape and form it takes in 1979.

Supply and Demand Changes

1.2 The dairy industry, after its early beginning in the pre-Confederation settlement period experienced its fastest growth from Confederation to the turn of the century. Since 1900, total milk production continued to expand reaching a peak in 1965. A decline and a levelling-off period has followed (see Table 1). From 1920, for example, production rose from 11.0 billion lbs. to 18.0 billion lbs. in 1970. However, within each decade there were wide fluctuations. Between 1920 and 1929 there was a 23 percent difference between the smallest and the largest level of annual production. During the 1960's the variation was only 4.5 percent. Recalling that milk is a perishable product, requiring expensive refrigeration equipment to keep it fresh or rapid processing if it is to be processed, the impact on the requirement for, and utilisation of, storage and factories is considerable given a year to year supply variation.

TABLE 1—TRENDS IN CANADIAN MILK PRODUCTION AND ITS VARIABILITY 1920-1978

	Total Milk Production	(billion	Lowest within the 10 year period*	pounds)	Highest within the 10 year period*	Size of Fluctuation: % change from lowest to highest %
1920	11.0		11.0		13.5	22.7
1930	13.1		13.1		15.8	20.5
1940	15.2		15.2		16.5	8.5
1950	14.9		14.9		17.7	18.8
1960	17.7		17.7		18.5	4.5
1970	18.0		16.9		18.0	7.5
1978	17.3		**		**	**

*i.e. for 1920, the 10 years 1920 through 1929

Source: Handbook of Agricultural Statistics, Part VII Dairy Statistics 1920-73, Catalogue No. 21-515

**Ten year comparison not available

1.3 Along with this production variation, important changes took place in the demand for milk for different uses (see Table 2). The major changes were:-

- i) a fairly steady rise in the quantity of milk consumed directly as fluid milk and cream rising from 14.5% of production in 1920 to 32.6% in 1978
- ii) an increase in milk going to butter production, with a peak production in World War II

(primarily for export) and a decrease in butter use during the 1970's. In 1920 almost half the butter was made on farms but by 1960, this "farm" butter had become insignificant and "creamery butter" (ie, made in a factory) reached a peak in 1970.

- iii) a fluctuating use of milk for the production of cheddar cheese — the peak here was in the 1890's with another peak in World War II and a rise again in the 1970's

- iv) a rapid rise since 1960 in the use of whole milk for manufacture and for cream cheese
- v) a rapid rise in the use of milk for the production of concentrated whole milk products to peak in the 1960's with a decline thereafter
- vii) a steady decline in the milk used on farms for home consumption and for livestock feed. The decline in the number of farms and in people living on farms (especially those with dairy cows) is the significant factor here.

Factors Affecting Supply and Demand

1.4 Through the 1930's, World War II, and the recent inflation (1973 to date), rising farm costs led many farmers to reduce or cease production. During the 1940's, for example, dairy farmers could not find

hired workers and labor shortages were serious and in the 1970's also created problems. Weather conditions in particular years have accounted for some of the production variation. In addition, the growth in wheat exports from the prairies, especially in the period from 1910—1930, encouraged many dairy farmers to leave Ontario and migrate to the prairies to grow wheat. In more recent times, and especially since 1945, milk production in the prairie provinces has declined steadily as farmers concentrated on grains. At the same time, the continuous increase in the Canadian population has resulted in a growing domestic demand for fluid milk, for cheese and for ice cream. On the other hand, the demand for butter has been adversely affected by nutrition concerns over animal fat, as well as its higher price relative to margarine, leading to a decline in total butter consumption in the last few years.

TABLE 2—TRENDS IN UTILISATION OF MILK—CANADA 1920-1977

	Fluid uses	Farm butter	Factory butter	Total butter	Cheddar cheese	Other cheese	Con. milk	Ice cream	Used on farms	Total Production
	(billions pounds)									
1920	1.6	2.4	2.6	5.0	1.7	—	.2	.1	2.4	11.0
1930	2.5	2.3	4.4	6.7	1.3	—	.2	.2	2.2	13.1
1940	3.1	1.8	6.2	8.0	1.6	—	.4	.2	1.9	15.2
1950	4.1	.7	6.1	6.8	1.1	—	.8	.4	1.7	14.9
1960	5.0	.2	7.5	7.7	1.2	.1	1.2	.7	1.8	17.7
1970	5.2	—	7.7	7.7	1.8	.6	.7	.8	1.2	18.0
1977	5.8	—	5.8	5.8	1.9	1.4	.8	1.0	1.2	17.1*

Source: Handbook of Agricultural Statistics: Part VII, Dairy Statistics, 1920-73, Catalogue No. 21-515

*Due to a change in the way Statistics Canada obtained this information, the figure for total production in 1977 is not comparable to that for previous years; nor is it the sum of the itemised products. (The comparable figure would be 17.9.)

1.5 The different uses for milk led in the early years to the organisation of dairy farmers into different groups producing milk for different markets. When transportation was by horse and refrigeration was not widespread, cities, towns and villages were supplied by local farmers. However, as fluid milk generally sold (and continues to sell) at a higher price than milk used for manufacturing, due to freshness and higher sanitation standards, other dairy farmers wanted a share of this market. The strong desire to receive the highest price created a situation where the fluid milk distributors could bargain with dairy farmers. When butter, then cheese and then concentrated and evaporated milk factories were built, each factory drew its milk from local farmers. Some farmers separated the cream and skim milk and delivered the cream to butter factories, while others delivered whole milk to cheese plants or to concentrated milk plants or to evaporated milk plants. Each fluid milk distributor and each factory made pricing arrangements separately and sometimes contracts with farmers about delivery quantities, e.g., fluid milk was needed all year round, but butter and cheese could be stored. Some

farmers, therefore, produced milk in the summer when costs were lower and accepted low annual average prices, others tried to deliver year round.

1.6 This process led eventually to farmers organising themselves into associations according to the type of milk use. This was especially true in Ontario and Quebec. These different groups became self-centered and tended to ignore some of the major changes taking place in the industry and the market for their products. For example, the fluid producers, whose market was constantly expanding, did not want to let other farmers into this market. The farmers supplying milk for butter blamed margarine and butter imports for their low prices. Cheese milk farmers blamed foreign countries and international problems for their low prices. Even the distributors and processors would not look to broad solutions to their problems and aggravated the industry's difficulties by over-building plants, duplicating milk transportation routes and circumventing many negotiated plans and government schemes.

Impact on Prices

- 1.7 The key problem that arose was centered on the prices received by farmers for milk and the prices at which milk and milk products could be sold. The 1930 depression brought very low prices for dairy products largely due to the drastic reduction in Canadian butter and cheese exports and the fall in consumer incomes. Larger volumes of milk were pushed into the fluid market and retail milk prices fell to very low levels. Fluid milk prices began to strengthen after Provincial Government intervention with the establishment of Milk Control Boards for the marketing of fluid milk. The 1939-45 war brought a price increase with a strong demand for butter and cheese and evaporated milk for export. Britain made contracts with the Canadian Government for the annual sale of large quantities of food during the war. The Wartime Dairy Products Board paid subsidies to farmers to boost production but a shortage of labour impeded its efforts. The expiry of the British contracts during 1953 to 1955 resulted in chaos, as neither the domestic market, nor other overseas markets could absorb all the milk and products then available. Prices declined and farmers were forced to organise and lobby governments for action. Thus the 1950's and 1960's were years of very active farm organization efforts and of new legislation both nationally and provincially.

Government Intervention

- 1.8 The chaos in the 1930's had led provincial governments to introduce controls into the fluid milk market. These generally involved
- i) the definition of a market area (a city or town) to which farmers could deliver
 - ii) a quota or volume for each farmer to deliver daily or annually and
 - iii) negotiated contracts between each farmer and the distributor relating to supplies, price, quality, price for "over" supply for that market area, etc.

Each farmer was allowed to deliver to one distributor. Only farmers with quotas could deliver in that market area. In Ontario alone this resulted in over 170 market areas and a large number of different price levels for fluid milk in the province. Indeed, it sometimes meant that individual distributors paid different prices to farmers, even within one market area. However, it did lead to some stability and in fact to slight increases over time in the prices received by farmers for fluid milk. However, the restrictions on entry into the fluid market depressed the prices in the manufacturing milk market. In order to try to deal with these depressed prices, governments at various times and in different ways began to intervene in the marketing of manufacturing milk products. The first federal attempt in this regard was by the Dominion Marketing Board, established under the Natural Products Marketing Act 1934. Through the use of a subsidy, surplus butter was diverted to export. Then in 1935-36, a 1.5¢ a lb. subsidy was paid on all milk

going for cheese and this step had the effect of stabilizing the price of all milk. But the Supreme Court declared the Natural Products Marketing Act (1934) *ultra vires* in July 1936. The Federal Government decided to leave the scene to the Provincial Governments.

Wartime Intervention

- 1.9 World War II brought major Federal Government intervention in the market for dairy products. In 1939-40 surplus butter went to families on welfare who were issued vouchers for which stores supplied butter. The government re-imbursed the banks who in turn re-imbursed the stores according to the number of vouchers received. Subsidies were introduced for fluid milk, manufacturing milk and cream, largely to increase production while keeping down inflation and the price to consumers. The subsidies were paid by the Wartime Price and Trade Board from September 1942 and were taken over by the Agricultural Food Board of the Department of Agriculture in 1943. The subsidies to farmers to increase milk production were phased out during 1946 and 1947.

Post-War Government Role

- 1.10 The Federal Government then made a commitment to support post-war agricultural prices and incomes. In 1944, the Agricultural Prices Support Act set up the Agricultural Prices Support Board which was empowered to support farm prices including milk by the purchase of product or by paying farmers deficiency payments. The Board began in 1946 with a policy of temporary, not permanent assistance.
- 1.11 In 1947, the Government passed the Agricultural Products Act which gave it authority to enter into bulk contacts with foreign Governments and to contract for storage and processing. The Wartime Meat, Dairy and Special Products Boards which had carried out the buying, storage, etc. for the wartime contracts were continued to enable Canada to meet the post-war world's food needs, especially those of Britain.
- 1.12 Subsidies to try to maintain the prices of dairy products were paid on a temporary basis. The price of butter was supported in Montreal at 58¢/lb in 1948, cheese for export was subsidized in 1950. In March 1951 all the wartime powers of the federal government expired. To replace these, the Agricultural Products Board was set up in December 1951 with wider powers than its predecessors. However, it did not establish a permanent subsidy system but dealt with each situation and each year as it came. By 1952, European agriculture had recovered from the war and post-war devastation, production was at record levels and Britain had a monetary crisis. Direct contracts with the U.K. government ended in 1955 and imports from dollar countries, ie, U.S. and Canada were strictly limited. These events had a major impact on Canadian agricultural exports which were considerably reduced. The new post-war trading situation meant that adjustments were necessary in the whole economy. The Canadian Government did not believe

it should attempt to provide large subsidies to agriculture to ease the adjustment problems in one sector of the economy.

- 1.13 The new Federal Government in 1958 took a different approach with the Agricultural Stabilization Act 1958 which set a minimum support level for nine "named" agricultural products including butter and cheese (not fluid milk or skim milk powder) at 80% of the 10 year average price. No clear policy for the dairy industry emerged with this new legislation. At the beginning of each dairy year (then May 1st) Ministers announced the levels of farm prices or support subsidies and other price and income arrangements.

Summary

- 1.14 During the 30 years from the depression, dairy farmers received very varied government help, from moments of intense activity and encouragement to periods of self-help and almost apathy or even annoyance with farmers. While the Federal Government financial help was the largest, provincial governments also went through the similar swings. Milk Producers in B.C. for example had many marketing problems until finally, in 1954, the Government appointed the Honourable Mr. Justice J.V. Clyne to make a comprehensive study of milk production and marketing. He recommended a series of changes for a stronger, more centralised operation under a revised statute and the provincial government acted on his advice. It took a series of reports and many efforts by a range of farm organisations to achieve similar developments in Ontario which did not reach fruition until 1965.
- 1.15 From 1934, when the Ontario Milk Control Board started administering fluid milk areas, prices (including retail) and quotas, four distinct groups of dairy farmers emerged, with varying degrees of organisation, and with similar groups for distributors and processors. They were the fluid milk producers, the cheese milk producers, the cream producers (for butter) and the concentrated milk producers. Proposals, plans and subsidies tended to deal with these separate groups and the problems of each. In fact, marketing boards were established, whereby groups of farmers producing and marketing one product could legally organize and control the product, negotiate with buyers, raise levies to operate and buy, sell, store and even subsidise. Thus 1934 saw the Ontario Cheese Producer Marketing Board begin, 1946 the Cream Producers Marketing Board and 1954 the Concentrated Milk Producers Marketing Board.
- 1.16 Similar situations had been occurring across Canada associated with local developments peculiar to each province. More milk was being produced in B.C. and Quebec (as well as Ontario) and, thus, the three provinces experienced fairly similar problems while less milk was being produced in Manitoba, Saskatchewan, Nova Scotia and New Brunswick. With the concentration of population and milk and dairy product manufacture in the central provinces of Ontario and Quebec, and the need to dispose of any surplus from this region, the marketing problems of these two provinces tend to depict the whole dairy problem.
- 1.17 In addition, some problems had developed in the dairy industry which both the industry and governments had become reluctant to face. The Hennessey Inquiry in Ontario was one result of this build up of problems and provides a useful list. There was the decline of Canada as an exporter of dairy products, leading to the greater dependence on the domestic market within Canada. Part of this export problem was the large and increasing export subsidies of other exporting countries which made international trading difficult for Canada. On the consumer side, there was the concern with reducing animal fat consumption, leading to lower butter consumption per capita and to the growth of 2% milk (reduced from the standard 3.5% butterfat). Associated closely with these moves was the rising popularity of margarine. It is important to note that while Hennessey stressed the above "external" problems in 1963, they continue to be important issues in 1979.
- 1.18 The Hennessey Inquiry also reported that within the dairy industry itself, there were continuing problems. The fluid milk producers remained in a preferred position (except perhaps in British Columbia where all types of milk producers were integrated into one major marketing board). Entry was restricted into the higher priced fluid milk market and all milk surplus to fluid requirements received a lower price. However, there was a high capital cost to buy into the fluid milk business, thus raising the cost of production and in Ontario, the quota system for fluid milk was not working properly. The Channel Island milk producers had won themselves a preferred position. At the same time milk processing was being integrated into plants producing a range of products but no moves were being made to integrate producers. There was a growth of unused capacity in production and processing due to marketing arrangements which artificially segmented the market and prevented milk switching from one use to another and from an over-utilized plant to one which was under-utilized. Progress was slow in upgrading milk quality and sanitation standards on farms, in dairies and in plants. One reason given for these problems was the lack of communication all through the industry and between provinces. It was suggested that the leaders of both farmers and processors were failing to recognize and respond to the evident need for joint action and that the provincial agencies and the Provincial Governments were failing to recognize these changes and pressures within the industry. There was also a suggestion that there was a lack of confidence in the Federal Government, which had provided subsidies, price support and import controls and announced these each year.
- 1.19 This was the background and situation for the Canadian dairy industry in the early 1960s.

SECTION II: CREATION OF THE CANADIAN DAIRY COMMISSION

The Demand for a National Authority

- 2.1 The 1960s opened with increasing pressure for dairy farmers and the dairy industry to get together. The establishment and the work of the Hennessey Inquiry

in Ontario, beginning in 1963 with a series of public hearings all through the province, was an important motivator. But national action was needed. At the Annual Outlook Conference held by the Federal Department of Agriculture in November 1962, the Canadian Federation of Agriculture called for a national dairy conference to chart a course for the future of dairying in Canada. This proposal was widely supported and the so-called First Canadian Dairy Conference was held in Ottawa February 21-22, 1963. It was a unique occasion because never before had 70 leaders from the dairy industry in the Federal and Provincial Governments, Farmers Organizations and Processors gathered together to discuss the problems, the future and proposals for action. A speech by the Executive Secretary of the Dairy Farmers of Canada proposed...

"a national authority to assure the responsibility for the marketing of milk and milk products, both domestic and export, in the interests of the Canadian dairy producers. On the whole, I would conceive a national authority to be engaged mostly in the field of regulation matters rather than being itself a buyer and seller of milk and milk products. This latter function might not be performed by it at all, or performed only in special cases of need — as in surplus disposal programs, or market stabilisation measures".

He went on to describe its powers, which did not include trading. However, he did hedge a little when he said

"I also realise that the need of the Authority for them (its powers) at any particular time and to any particular extent must be determined by study and experience".

2.2 In its report, the Conference asked that an advisory committee be appointed to consider a wide range of items, amongst which a National Agency was listed separately as requiring continuing study. This advisory committee was to be composed of 16 members of which one was to be appointed by the Federal Government and one from each of the 5 regions (Atlantic, Quebec, Ontario, Manitoba/Saskatchewan and Alberta/British Columbia) by the Dairy Farmers of Canada, the National Dairy Council (the processors) and the Provincial Governments.

2.3 The Federal Minister of Agriculture, Hon. Harry Hays appointed the Committee and it had its inaugural meeting June 24, 1963 in Ottawa. In fact, seven full committee meetings were held between October 1963 and March 1965, as well as many meetings of its four sub-committees. Its 27 page report (plus appendices) was finalized and published in August 1965. Its recommendations covered research, quality, marketing and "other". On marketing, it had four pages, mostly devoted to a clear and straightforward set of views on a national dairy authority. After dealing with objectives, legislation, status, composition and financing, eight separate functions were listed. One of these gave the Committee "authority in the field of foreign trade and to act on matters related to exports and imports, subject to government policy". Then follows an illustrative example concerned with possible profits

to be made from imports. It was suggested that any profits should be used for export assistance.

However, the example referred only to the kinds of powers the national authority would need and the kinds of action it might take in foreign trade and made no reference to who should actually do the trading.

2.4 With the Canadian Dairy Conference and the Canadian Dairy Advisory Committee Report, the General movement towards a national authority was now strong. The Federal Government took the ideas on board. The Liberals were re-elected in November 1965 and the Hon. J.J. Greene, Minister of Agriculture introduced into the Committee of the House on Thursday June 16, 1966 the Canadian Dairy Commission Bill C-205. Second reading began June 23 after widespread support for it had come from across the House. During Second Reading, the Minister made it clear that

"It is not possible at this time to indicate, other than in a broad way, the manner in which the Commission will operate. The dairy industry is a complex and ever changing entity, and with these changes, different approaches will doubtless be needed on the part of the Commission. The legislation has been drafted to provide for sufficient flexibility to permit the Commission to meet the objectives set for it, despite changing structures in the Canadian dairy industry." (June 20, 1966, p. 6657)

Third reading was completed June 23, 1966, the Act went quickly through the Senate and received Royal Assent on 11th July 1966.

The Canadian Dairy Commission Act 1966

2.5 The Act to provide for the The Canadian Dairy Commission came into force on October 31, 1966 and the Commission became fully operative with the start of the new dairy year on April 1, 1967. The Commission is a federal government crown corporation, consisting of 3 members appointed by the Governor in council: a chairman, a vice-chairman and one other members. The Commissioners are directly responsible to the Minister of Agriculture. The offices of the Commission are in Ottawa. The Chairman is the Chief Executive Officer of the Commission.

2.6 **Objective:** The objective, as stated in the Act, is as follows:

"To provide efficient producers of milk and cream with the opportunity of obtaining a fair return for their labour and investment and to provide consumers of dairy products with a continuous and adequate supply of products of high quality."

2.7 **Powers:** The authority granted the C.D.C. to achieve this objective may be summarized as follows:

1. to purchase, store, process or dispose of dairy products in any way it desires
2. to make direct payments to producers

3. to investigate matters pertaining to the production, processing and marketing of any dairy product
 4. to help to promote the use of dairy products
 5. to deduct levies from payments to producers.
- 2.8 **Regulations:** These powers are to be carried out subject to and in accordance with any regulations made under this Act. Specifically, the Governor in Council may make regulations controlling the marketing of any dairy product, including regulations on quotas, agencies licencing, record keeping, fixing and collecting levies, seizure and disposal. No regulations have been authorized by the Governor in Council regarding the marketing of dairy products by the CDC since its inception in 1966.
- 2.9 **Consultative Committee:** The Minister is required to appoint a Consultative Committee consisting of a chairman and eight other members. Each member is appointed for up to three years. The Committee is designed to advise the Commission on matters pertaining to the production and marketing of dairy products, as requested by the Commission. A full Committee was appointed when the Commission was established and was generally active in the early years. It continued to meet up the February 8, 1977, when terms of appointments expired and were not renewed. In October 1979 the vacancies are being filled.
- 2.10 **Commissioners:** The Commission came into being on October 31st, 1966 and Dr. S.C. Barry was appointed Chairman on December 1st, 1966. For seven years prior to his appointment, Dr. Barry had been the Deputy Minister of Agriculture. As Deputy Minister, Dr. Barry had responsibility for the Agricultural Stabilization Board and was very familiar with all the developments in federal dairy policy and programs up to that time. Mr. L.A. Atkinson was appointed Vice-Chairman. He had been the General Manager of the Frazer Valley Milk Producers, which was the largest farmer dairy co-operative in British Columbia with extensive processing facilities. Mr. Atkinson thus brought to the Commission an understanding of the dairy processors' concerns. Mr. M.J. Thibaudeau, a Quebec dairy farmer, was appointed Commissioner on 15 March 1967 to bring into the Commission the interests of the producers.
- 2.11 **Source of Funds:** The Commission, under the Act, receives each year, following determination by the Governor in Council pursuant to the Agricultural Stabilization act, a total amount to be paid by the Agricultural Stabilization Board to the Commission for the purpose of stabilizing the price of milk and cream. Each year the Commission is instructed to submit to the Minister of Agriculture an outline of the program by which it proposes to carry out its functions for the following fiscal year. All expenditures for salaries, travelling expenses and administration (except those in the opinion of the Minister directly attributable to action by the Commission to stabilize the price of any dairy product) are paid out of monies appropriated by Parliament for that purpose.
- 2.12 **Commission Staff:** Mr. D.B. Goodwillie served as Director of Marketing from April 1, 1967 until his death in October 1972. Previously he had been Chief of Marketing for the Agricultural Stabilization Board and was already very familiar with the dairy product market. Dr. H. Mestern joined the Commission about the same time as its economist, R.J. Labossière became Director of Subsidy Administration in August 1968 and A.O. Blouin was made Secretary-Treasurer. Mr. J.R. Sherk filled the position of Director of Marketing from January 1973. With this core of officers, the Commission had a staff of 25 in December 1967. From then on it was a steady build-up to 37 persons in 1969-70, 45 in 1973-74, and 53 in 1976-77. During this time there have been major changes in the key personnel. For example, Dr. Barry retired in 1973 and was replaced by Ellard Powers, an Ontario farmer who first joined the Commission when Mr. Atkinson retired. Mr. Powers was replaced by acting Chairman Ken Savage in July 1976. He, in turn, was succeeded as Chairman Ken Savage in July 1976. He, in turn, was succeeded as Chairman in November 1976 by Gilles choquette, previously Executive Assistant to the then Minister of Agriculture, the Honourable E.F. Whelan, and before that Assistant Executive Secretary to the Canadian Federation of Agriculture, responsible for dairy. Following Mr. thibaudeau's resignation in November 1976, Mr. Elwood Hodgins was appointed Vice-Chairman in May 1977. Mr. H.M. Johnson was appointed commissioner in 1973 and is still there. On the staff side, Mr. R. Tudor-Price joined in October 1975 as Director of Market Intelligence. Mr. Sherk, who was on loan from Agriculture Canada, retired in December 1974. In October 1974, Mr. Marcellus was appointed Director of Marketing Operations.

Relationships with Other Organisations

- 2.13 **Agriculture Canada:** At the outset, the Chairman of the Agricultural Stabilization Board, Mr. S.B. Williams, (also the new Deputy Minister) worked closely with Dr. Barry on the annual dairy program. On Dr. Barry's retirement, this relationship continued with Mr. Powers but as the staff and their experience increased, the Commission steadily took greater control of the development of policy and its implementation. Agriculture officials thus became less involved in policy and the widespread activities of the Commission. However, Agriculture Canada was very involved with the formulation of the long term dairy policy established in 1975. In the areas of quality control and inspection, Agriculture officials continued to work closely with the Commission and more particularly with the processors.
- 2.14 **Industry, Trade & Commerce:** At all times there have been close working relationships between the Commission and the Department of Industry, Trade and Commerce which has been responsible for trade development, trade control and trade agreements. Officials both in Ottawa and in Canadian Embassies assisted in seeking export markets and aiding Canadian exporters, the Commission and its staff. The Minister of Industry, Trade and Commerce administers the Export and Import Permits Act, under which

control of imports is regulated. Dairy policy development has involved increasingly severe restrictions on imports of dairy products. In addition, the Department took the lead in the negotiations for an International Skim Milk Powder Agreement under the General Agreement on Tariffs and Trade in 1970, and in subsequent discussions on dairy products.

- 2.15 Provincial Governments and their Agencies:** With the divided jurisdiction which has evolved in the milk industry between the provincial governments covering fluid milk pricing and quotas, and the federal government covering industrial milk pricing and quotas,¹⁾ it has been essential that close relationships be maintained between all Departments of Agriculture and the provincial Marketing Boards. Initially these were informal agreements, but, encouraged by the producers' organisation, formal arrangements were set up with the Canadian Supply Management Committee, chaired by the C.D.C. Chairman but with all provinces represented. Meetings were held every two months to review production levels, quota allocation and distribution, and consumption and utilisation. This close liaison also applied to the Dairy Farmers of Canada's national dairy promotion organization, the Canadian Dairy Foods Service Bureau, to which the federal government, through the CDC, made contributions in 1976.

¹⁾ This division arises primarily because very little fluid milk crosses provincial boundaries and, in fact, is frequently produced close to the city where it is consumed. Dairy products made from manufacturing milk often enter interprovincial and export trade and thus come under the preview of the Federal Government.

- 2.16 Dairy Farmers of Canada:** The C.D.C. has always worked closely with the dairy farmers' organization, attending meetings, receiving representations and developing policy. It would be fair to suggest that the C.D.C. has generally acted in favour of the dairy farmers. Internationally the C.D.C. has participated in the International Dairy Federation and hosted the annual convention in Canada in 1977.

- 2.17 National Dairy Council:** The processors and traders present their views through their National Dairy Council and its provincial bodies. The C.D.C. has worked closely with the NDC since the C.D.C. was established.

Role of the Canadian Dairy Commission

- 2.18** The Canadian Dairy Commission was, in fact, placed in the role of the central governing body to which all parts of the billion dollar industrial milk and cream sector of the total milk industry were looking for leadership and direction; yet, at the same time, jurisdiction was divided between provinces and the federal government and farmers and the trade and processors were uncertain of their positions. Thus the C.D.C. was faced with meeting the requirements and expectations of the government, and of producers, processors, traders and consumers.
- 2.19** The Federal Government was providing the necessary funds for operating expenses and for subsidies to

farmers, for price support, marketing, research and promotion to help the Commission's program function; and the Government had certain expectations that the Commission would overcome, or at least alleviate and contain, the eruptions and pressures in an industry facing difficult problems and that it would be able to bring about change. The producers' expectations for the future were that the financial rewards for them would be what they could regard as a fair market price or return. Processors, serving as the middlemen between the producer and the consumer, believed that they needed some assistance in the marketing process because supplies of industrial milk could readily be in excess of the demand for the products if prices were not adjusted to remove the surplus. Furthermore, the seasonality of industrial milk production and the fact that some products, eg. skim milk powder, were being produced in excess of domestic requirements, demanded in the eyes of the producers and processors, a system of product removal from the market in order not to depress the prices farmers received for their milk. The consumer desired a continuous supply of safe, clean and nutritious dairy products in volumes sufficient to satisfy consumption at the prices offered. It was into this set of expectations that the C.D.C. was established as a Crown Corporation, type C, with wide powers because of its commercial operations, with an extremely large number of farmers with dairy cows delivering some milk for manufacturing, including many farms with only a few cows. It is also relevant that, in general, the climate in Canada is not ideally suited to milk production compared with that of other countries and with other farm commodities. However, in some parts of Canada, other farm employment opportunities were almost non-existent without major structural changes and heavy investment. As a result, the Canadian dairy industry does not compare well in terms of efficiency with the dairy industry in many other countries.

SECTION III: FEDERAL DAIRY POLICY — SOME DETAILS AND CHANGES OVER TIME

Introduction

- 3.1** There are two milk markets in Canada — fluid milk and manufacturing (industrial) milk. Policies relating to the dairy industry in Canada can therefore be divided according to the use to be made of the milk. In many respects, the division between fluid and manufacturing milk policy arises from jurisdictional differences between levels of government. Provincial governments are almost totally responsible for both fluid marketing and policies that affect fluid milk prices. The policies for manufacturing milk are largely established by the Federal Government, although the actual administration of the programs emanating from Federal policies is often carried out by the Provinces.
- 3.2** The different practices in the handling of the two types of milk, particularly those in operation in the 1950's and 1960's, supported the division of policy responsibilities between the federal and provincial

governments. Milk for fluid consumption must be transported with minimum delay, is costly to transport and is perishable. Dairy products such as butter, cheese, and skim milk made from manufacturing milk are, on the other hand, storable and easily transportable. In general, this division of responsibilities is also in keeping with the intent of the BNA Act which supports provincial jurisdiction over intraprovincial matters and federal jurisdiction over both interprovincial matters and international trade. Little fluid milk crosses provincial boundaries, while dairy products move interprovincially and into export trade.

3.3 The markets for manufacturing and fluid milk have been virtually independent. The market for manufacturing milk and cream is mainly supplied by farmers whose output is destined solely for that market and the market for fluid milk is filled by other dairy farmers. There is, however, an overlap between the two markets because milk produced for the fluid market in excess of fluid milk demand has to be diverted to manufacturing use. Thus the policies of the Federal Government, and the changes in them, relate to the manufacturing milk sector of the dairy industry. In recent years there has been substantial progress towards integration and by 1977, Manitoba, for example, was fully integrated with no separation of fluid and manufacturing at the farm level.

3.4 The Federal Government is primarily responsible for manufacturing milk pricing and supply control through the operations of the Agricultural Stabilization Act (1958) and the Canadian Dairy Commission Act (1966). The Canadian Dairy Commission is the Federal Agency that has responsibility for administering Federal Dairy Policy. The development of this policy has been largely in response to circumstances that have led the government to intervene to try to improve market conditions, especially prices, for manufacturing milk and dairy products. Three phases can be identified in this policy development:

- i) Up to 1966-67 and the creation of the Commission (CDC).
- ii) 1966-67 to 1975; the creation of the C.D.C. and the announcement of the "long term dairy policy".
- iii) 1975 to present, the operation of the "long term dairy policy".

i) Up to 1966-67 and the Creation of the C.D.C.

3.5 Federal involvement with the dairy industry in Canada began in the depression years of 1935 and 1936 when Federal programs to support the price of certain dairy products were introduced in an attempt to minimize large changes in price and to increase the income to dairy farmers. The emergency situation created by World War II resulted in special Government involvement. In order to prevent the recurrence of a farm price collapse after the war, similar to the one that followed World War I the Federal Government passed the Agricultural Prices Support Act in 1944. The Agricultural Prices Support Board, which administered the Act, became operative in 1946, but

it made no major purchases of dairy products until 1949. A revolving fund of \$200 million was available to the Board for use as working capital in its purchase programs designed to maintain price levels for farm products including dairy.

3.5 The war and immediate post-war period was one of food shortages and programs were designed to foster production and encourage, and even contract for, large and continuous volumes of exports. With the cessation of the fighting and a slow return to normality, especially in North America, concern arose over imports of dairy products into Canada. Thus in July 1951 dairy products were placed under the Exports and Imports Permits Act. From that time, dairy products have generally been subject to restrictive import control.

3.7 In order to permit the Federal Government to buy and sell agricultural products and, in particular, to enter into contracts with foreign governments, the Agricultural Products Board Act was passed in 1951. The Board that the Act set up under the Minister of Agriculture became the operating arm of programs that took surplus products off the market, stored them, had them processed, etc. or resold them or arranged for their export. This Board works closely with the Agricultural Stabilization Board and, in fact, since 1958 has had the same three-man membership. Mr. L.W. Pearsall was the first chairman of the Stabilization Board. Mr. S.B. Williams succeeded him and remained chairman of both boards until his retirement in 1975: he was also the Deputy Minister of Agriculture from 1967.

3.8 The powers of the Agricultural Products Board are, with the authority of the Governor in Council and under the direction of the Minister, to:-

- i) sell or deliver agricultural products to the government or agency of any country as part of any agreement made by the Government of Canada with that government or agency; and for these purposes purchase and arrange to purchase, sell or deliver agricultural products;
- ii) purchase or negotiate contracts to purchase agricultural products on behalf of the Government or agency of any country;
- iii) buy, sell or import agricultural products;
- iv) require information to administer the Act;
- v) store, transport or process or contract to store, transport or process agricultural products.

However, unless given prior approval it could not buy, sell or import at a loss and had to cover handling, storage, and transportation costs.

3.9 The Agricultural Stabilization Act was passed in 1958 and superseded the Agricultural Prices Support Act. The Agricultural Stabilization Board, the new administrative agency, was charged with guaranteeing the prices of butter and cheese (as well as other agricultural products) each year at 80 percent of the average price realized over the previous ten years. The Government could, however, increase the support

prices above this level if such factors as the cost of production justified it. The revolving fund was increased to \$250 million.

3.10 The purpose of the Agricultural Stabilization Act, 1958, is to stabilize "the prices of agricultural commodities in order to assist the industry of agriculture realize fair returns for its labor and investment, and to maintain a fair relationship between prices received by farmers and the costs of goods and services that they buy, thus providing farmers with a fair share of the national income". The Act establishes a three member Board which may:-

- i) purchase any commodity of the prescribed price;
- ii) pay to producers, directly or through an agent, the difference between the prescribed price and the average market price;
- iii) make payments to stabilize prices;
- iv) sell, package, process, store, ship, export or otherwise deal in any commodity;
- v) enter into contracts and appoint agents;
- vi) purchase at request of the federal department;
- vii) do all that is necessary to fulfill its duties. This legislation is the basis of all Federal price support to the Canadian manufacturing milk industry. All money paid to the Canadian dairy farmers by the Federal Government or its agencies in respect of income and price support must come within the authority of this Act. The Act was revised in 1977 to improve the level of price support to farmers but its powers and responsibilities remain the same.

3.11 Given these three policy instruments — the Stabilization Board, the Products Board and import controls — federal dairy policy and programs slowly evolved in the 1950's through to 1967 when the Dairy Commission took over. While some programs were only temporary, the Board did introduce features that have become permanent parts of the national dairy policy. Beginning in May 1, 1959, a direct subsidy was paid to producers of manufacturing milk through the processors of 25¢ per 100 lbs. (except to those producers shipping a portion of their milk to the fluid trade). This direct subsidy was discontinued on May 1, 1963 because milk production had risen. From the outset, the Board continued the "offer to purchase" program for butter, setting an annual price at which it would buy, store and resell butter. This program grew out of the wartime and post-war activities of the Boards that purchased dairy products for export. When the export market for butter virtually disappeared, the Products Board and then the Stabilization Board made an offer to buy butter from processors (on the basis of stated quality and other specifications). The Board stored and resold the butter. In general, the Board was offered large volumes of butter during the peak manufacturing milk production season of the spring and summer. At this time, prices of butter fell and the action of the Board maintained

or "supported" a steady product price. During the fall and winter seasons, butter production was low and distributors bought butter from the Board to sell to retailers. With these supplies back on the market, prices did not rise in the "off" season. Thus a stabilizing effect was created.

3.12 However, a large build-up of butter stocks occurred during the mid-1960's due to a combination of rising milk production and declining per capita consumption of butter as margarine continued to rise in popularity. This problem led the government to adopt some special programs. For the 1962-63 dairy year the Federal Government maintained butter at a wholesale or ex-plant price of 64 cents per lb. But to encourage higher consumption, it added a consumer subsidy of 12 cents a lb. In addition, large subsidies were paid on butter and butter oil for export. Within two years the large stocks of butter that had accumulated were considerably reduced but only after the industry had been shocked into recognizing that per capita consumption was declining, that price was important, and that milk production would have to be controlled if costly surpluses were to be avoided.

3.13 Most dairy products other than butter were in balance. The demand for cheese was strong and no direct support price was needed as long as the support price for butter was underpinning the market. However, the by-product of butter manufacture is skim milk. When the cream was separated on the farm, the skim was fed to livestock. In the post-war period, more and more whole milk was being delivered to the processing plants and less skim returned to the farm. The reasons included the adoption of bulk transport for milk and the price competitiveness of substitute feeds for skim milk. This surplus skim has had to be dried, and sold in a range of markets. The market within Canada is small. The international demand is largely for human consumption in the poorer developing third world countries, who want to pay as little as possible for the product; prices are even lower in the animal feed market. An additional determinant of the low world price has been the competition between developed countries to dispose of their surplus powder in the world market, using export subsidies, while protecting their own higher domestic price.

3.14 Thus in the early 1960's the price that the factory could get for its skim milk powder was low — in the region of 5¢ a lb. This price, together with the butter price which the Agricultural Stabilization Board (A.S.B.) supported around 64¢ a lb., determined what a milk factory could pay farmers for their milk. So the A.S.B. began to support the price of skim milk powder with an "offer-to-purchase" program similar to butter. But it also began to build up stocks of the powder, and had to provide temporary export subsidies. To try to avoid the problem of large stocks, it restricted the "offer-to-purchase" program to a maximum quantity it was prepared to buy. Nevertheless, the volumes of production of milk powder continued to increase and the problem of disposal became greater.

3.15 For the year 1965-66, the government tried to raise the average returns received by manufacturing milk

producers to \$3.50 per 100 lb. milk. This was the first attempt to provide a uniform price for all manufacturing milk, regardless of its utilisation. Up to this point, each factory had paid producers according to the price it could get for its products, whether they were butter, skim milk, cheddar cheese, whey, evaporated milk, specialty cheese, etc. The plan involved supporting the butter price, and continuing the consumer subsidy and the export subsidies, as well as two direct subsidies to farmers to reach an average of \$3.50. First, there was a payment to cover the difference between actual average price farmers would eventually receive for their milk from the factories and the Government price of \$3.30 per 100 lbs. milk. Second, a payment based on each farmer's production in the previous year and graduated according to the size of that production. The average value of this payment was about 20 cents.

- 3.16 This complicated system was replaced by a new program for 1966-67, which, in fact, built on the past but in the process established the system in general use by the C.D.C. up to the present. An average gross return for farmers was established: for 1966-67 it was \$4.10 per 100 lbs. milk. The A.S.B. announced a support price for butter and skim milk powder which allowed the processors to pay farmers \$3.25 per 100 lbs. milk. It also announced a direct payment to farmers of 85¢ per 100 lbs. but, as a new step, deducted 10¢ to pay for export subsidies on product surplus to the Canadian market. This deduction was known as the "hold-back levy". The systems to operate these programs had been developed by the previous work of the A.S.B.

ii) The Period 1966-67 to 1975

- 3.17 The C.D.C. assumed responsibility for the administration of the Federal Government's dairy program commencing with the 1967-68 dairy year which ran from April to March. Two problems faced the dairy industry when the C.D.C. was established; production levels were above domestic requirements, and the structure of the farming sector was characterized by a large number of small-scale operators, many of whom had limited alternative economic opportunities. A workable policy and system had been developed and the Commission appointed several from Agriculture Canada to operate it. In order to keep manufacturing milk production in line with market requirements, the C.D.C. introduced a quota for each farmer, based on his previous year's deliveries. This quota entitled each farmer to the direct subsidy payment that was known as the Subsidy Eligibility Quota or S.E.Q. The Commission also restricted the maximum and minimum size of the quota. In 1966-67 fluid milk in excess of fluid milk market requirements was paid subsidy on production above 125 percent of fluid sales.
- 3.18 This quota system was the first step towards a managed milk and dairy product supply program. At this stage it covered only 80 percent of manufacturing milk production because the balance came from farmers with fluid milk quotas who produced excess fat for manufacturing use or from fluid milk distributors who found themselves with excess (as a result of changes

in consumer demand) which they diverted to manufacturing use. As the income from manufacturing milk became more remunerative (factory price plus direct subsidy) many farmers began to ship more milk than allowed under their S.E.Q. although no subsidy was payable on shipments above the S.E.Q. The hold-back levy continued and in 1969, the C.D.C. introduced an "over quota" levy or holdback paid on production in excess of farmers' quota which was equal to twice the levy he paid on his within quota milk shipments. In 1970 this "over quota" levy was raised to 26 cents per 100 lbs. milk.

- 3.19 Many farmers especially in Ontario and Quebec believed that one of the main causes of the cyclical over-production of manufacturing milk was the lack of a guide to the size of the market available to individual producers. In order to overcome this problem, the Dairy Farmers of Canada developed a "comprehensive and equitable" marketing plan that was to cover all milk used for manufacturing, including excess fluid milk. The Federal Government negotiated this plan with the Provincial Governments and producer groups and an agreement was eventually signed by the C.D.C. and participating agencies in the provinces. Ontario and Quebec joined the Plan in December 1970 while other provinces joined later; Prince Edward Island on December 1971; Alberta, April 1, 1972, Manitoba and Saskatchewan in July 1972; British Columbia, October 1, 1973; Nova Scotia and New Brunswick April 1, 1974.
- 3.20 The main provision of the Comprehensive Milk Marketing Plan was that the provincial agencies would allocate individual market quotas to producers and deduct a levy on deliveries within quota, and those in excess of quota, from the market price on behalf of the C.D.C. and remit these levies monthly to the Commission. The C.D.C. would make the subsidy payments at the full rate, without holdback deductions, and undertook to restore the subsidy quotas to the level existing at the beginning of the 1970-71 dairy year in the participating Provinces. The Plan included a committee, known as the Canadian Milk Supply Management Committee, comprising three representatives from each province; one representing the Provincial Government board or commission, and two representing Provincial producer boards, and three representatives of the C.D.C., under the chairmanship of a member of the C.D.C. Observers from the Dairy Farmers of Canada and participating agencies attended the meetings as required. The Committee continues to meet every two months and more often when required and is responsible for administering the supply management program.
- 3.21 All producers were registered with the C.D.C. and with the Provincial Milk Marketing Boards, who allotted quotas to producers already licensed by them. Fluid producers in provinces with pooling arrangements approved by the C.D.C. and already licensed by the Provincial Board, also became registered with the C.D.C. Manufacturing milk quotas were allotted to them for milk in excess of that covered by fluid quotas. Under the Comprehensive Milk Marketing Plan, market quotas became freely negotiable be-

tween producers. The C.D.C. arranged to reallocate the S.E.Q. of a seller to a buyer upon written proof that the market quota had been transferred. The "in-quota" levy remained the same as the "holdback" from direct subsidy. The "over-quota" levy was set on the basis of the funds required to sell milk solids in world markets, with a minimum rate of \$1.50 per 100 lbs. milk as a discouragement to producing above the quota level.

3.22 There was an immediate reduction in the over quota levy deducted from manufacturing milk producers who had shipped over their subsidy quota. Producers' new market quotas covered their current level of production, and they paid the market quota levy of 0.26¢ instead of their over-subsidy quota "holdback" of \$1.25. The reduction in export charges was possible because market quotas now included all shipments of manufacturing milk and the in-quota levies were collected on a larger quantity of milk than before.

3.23 In 1974, the C.D.C. dropped the S.E.Q. concept and subsidies were paid on all milk produced within the Market Share Quota. During 1970-1975, however, the M.S.Q. did not operate as a real constraint on milk production because, as provinces entered the Comprehensive Milk Marketing Plan, they received concessions in the size of their basic quota entitlements. In addition, these quota entitlements were protected against a reduction in size for three years. As a result, more M.S.Q. was available in the market-

ing system than was necessary to meet domestic requirements of manufacturing milk. In fact, not all M.S.Q. was utilized during the years 1970-75 and domestic production declined for several reasons including: the establishment of S.E.Q. in 1967; improvements in alternatives available to dairy farmers; increasing input costs that placed producers in a cost-price squeeze; and adverse weather conditions. The Government, which had succeeded in removing the surplus problem of the late 1960's, was now faced with a production shortage. During 1972-73, substantial volumes of butter had to be imported by the C.D.C. Faced with the problem of declining production and the severe price inflation affecting farm costs, the Government increased the target price to farmers six times between April 1st 1973 and January 24, 1975. These target price increases, combined with the payment of direct subsidies to farmers on all Market Share Quota, encouraged an increase in production.

3.24 The price and subsidy levels established by the C.D.C. in its first eight years are set out in Table 3 below. In particular, the offer-to-purchase price for skim milk powder rose from the 20¢ a lb. for 1967-71 up to 51¢ a lb. by January 1975. The "holdback" to cover the export subsidy costs rose from 11¢ per 100 lbs. milk in 1967-68 to 26¢ in 1970-71 and then, on the new basis of provinces remitting the levy to the C.D.C. on a target volume of milk, it changed from 10¢ in 1971-72 to 15¢ in 1974-75.

TABLE 3
SUPPORT PRICES FOR BUTTER AND SKIM MILK POWDER, DIRECT
FEDERAL SUBSIDY AND WITHIN QUOTA LEVIES FOR MANUFACTURING
MILK IN CANADA 1967-1975

<u>Year</u>	<u>Butter</u> c/lb.	<u>Skim Milk</u> <u>Powder</u> c/lb.	<u>Direct</u> <u>Federal</u> <u>Subsidy</u> \$/100lbs.	<u>Within</u> <u>Quota</u> <u>Levy</u> \$/100 lbs.
Apr 1 1967	63.0	20.0	1.21	0.11
Apr 1 1968	63.0	20.0	1.31	0.15
Aug 1 1969	63.0	20.0	1.31	0.21*
Sept 30 1968	65.0*	20.0	1.31	0.21
Apr 1 1969	65.0	20.0	1.25	0.26
Apr 1 1970	65.0	20.0	1.25	0.26
Apr 1 1971	65.0	24.0	1.25	0.10
Aug 16 1971	68.0	26.0*	1.25	0.10
Apr 1 1972	68.0	29.0	1.25	0.10
Apr 1 1973	71.0	35.0	1.45	0.10
Aug 1 1973	71.0	38.0*	2.01*	0.10
Apr 1 1974	77.0	50.0	2.30	0.15
June 1 1974	77.0	50.0	2.56*	0.15
Aug 1 1974	85.0*	54.0*	2.56	0.15
Jan 24 1975	90.0*	59.0*	2.56	0.15

*change at date other than beginning of new dairy year April 1

iii) 1975 — 1977 — The Long Term Dairy Policy

- 3.25 The policy issue of the period 1973-75 became the need to avoid the ad hoc nature of the annual dairy program announcement and frequent interim adjustments, and to strive for a better balance between maintaining a dairy industry and the increasing costs to consumers and taxpayers. On the one hand milk production had to be maintained to meet domestic butter and cheese requirements in the face of rapidly rising production costs, and on the other, the increases in consumer prices for dairy products and in taxpayer costs for direct subsidies to farmers had to be dealt with. The Federal government undertook a review of dairy policy and after two years announced in April 1975 a five year policy.

The Minister of Agriculture, in announcing this long term policy outlined its main elements, but did not go into its technical details. One of the main components of this policy was the introduction of a returns adjustment formula, which would form the basis for establishing returns to dairy farmers for manufacturing milk. The base return was set at \$11.02 per 100 pounds of milk effective April 1, 1975. This base was to be adjusted in relation to changing production costs as reflected in the cost formula which comprised of (i) an index of cash costs of milk production (45% weight), (ii) the rate of change in the CPI as a proxy for the farmer's labour input cost (35%) and (iii) judgemental factors (20%) such as significant changes in the level of stocks of dairy products; changes in the returns to dairy producers in other milk producing countries; and major changes in competitive processing costs. A change of more than 4% in the formula would lead to price changes either up or down.

The Market Share Quota would continue as an essential feature in balancing domestic supply and market requirements, and would continue to complement the price support and direct subsidy elements of the Dairy Program.

An additional feature of the long term policy was the government's stated intent to progressively increase

the share of producer returns coming from the market-place. The government would not raise direct subsidy payments, per unit of milk and cream, or total dollar expenditures above 1975 levels (i.e., \$266 million).

- 3.26 On April 1, 1975, butter was supported at 90¢ a lb., skim milk at 60¢ and the "in quota" levy for support sub-expanded by 15-16% during 1975 but remained within the total MSQ of 121 million cwt. But production exceeded projected domestic requirements by 11 million cwt during 1975-76 and so the C.D.C. reduced the amount of M.S.Q. on which the subsidy would be paid for the remainder of the dairy year (i.e., to March 31, 1976) in order to hold total subsidy payments on milk to the \$266 million authorized in the long term Dairy Policy. Due to the under-utilization of their M.S.Q. some provinces did not, in fact, cut production at all. For the next year, however, while increasing the support prices as determined by the cost formula, and doubling the in-quota levy, the total MSQ was cut by 14 percent and set at approximately 95 cwt (an original cut of 18 percent and an increase of 4 percent in October 1976).
- 3.27 While the total M.S.Q. issued is related closely to domestic and commercial export requirements, there is no one-to-one correspondence between the two. The national M.S.Q. for manufacturing milk and cream consists of market requirements, special allotments for some minor producing provinces and a tolerance of "sleeve" — generally around 5 percent — a feature that was introduced in April 1976. Subsidies are not paid on the sleeve (unless at year-end the sleeve production is found to be needed); its purpose is to provide sufficient flexibility in the quota system to ensure adequate milk supplies are forthcoming to meet requirements. For individual producers who fill their subsidized M.S.Q. the sleeve lessens the risk of incurring over-quota penalties. The global M.S.Q. was further reduced by approximately 2% in July 1977, after an increase of 4% in October 1976 and 1% in April 1977.

The support price developments from 1975 to 1977 are summarized in Table 4.

Table 4
Support Prices for Butter and Skim Milk Powder, Direct
Federal Subsidy and Within Quota Levies for Manufacturing
Milk in Canada 1975-1977

	Support Price Butter ¢/lb.	Support Price SMP ¢/lb.	Direct Federal Subsidy \$/100	Within Quota Levy \$/100
Apr 1 1975	90.0	64.0	2.66	0.45
Jul 1 1975	103.0*	64.0	2.66	0.65*
Apr 1 1976	108.0	68.0	2.66	1.35
Apr 1 1977	118.0	70.0	2.66	1.20

*change at date other than beginning of new dairy year April 1

SECTION IV: OPERATIONS OF THE CANADIAN DAIRY COMMISSION

Introduction

4.1 Previous sections have described the objectives, powers, staffing and sources of funding of the Commission (Section II) and the policies that were put into play before the Commission was established and some of the changes made by the Commission (Section III). This section sets out to describe some of the specific operating practices of the Commission. There are four major areas of which three are important as far as skim milk powder is concerned.

They are: -

- i) Direct Subsidy to Farmers
- ii) "Offer-to-Purchase" Program
- iii) Storage and Inventory Control Procedures
- iv) Marketing, especially for export

As indicated in Section III, all these programs were started by the Agricultural Stabilization Board and the Agricultural Products Board before the Dairy Commission came into being. Thus the Commission inherited the procedures and, in some cases, the personnel, and has refined them over its 13 year history.

Direct Subsidy to Farmers

4.2 The level of this subsidy has been decided by Cabinet each year and announced immediately prior to the dairy year as a part of the next year's program. Since the announcement of the five year long-term policy in 1975, this direct subsidy has remained constant at \$2.66 per 100 lbs milk. From the administrative point of view, from the beginning, the needed information has been which farmers would be eligible, how often was it to be paid and for what volume of milk. All dairy farmers must be registered with the Commission which maintains an ongoing record in close cooperation with the provincial milk marketing boards. Commencing in 1967, the subsidy has been paid monthly on the basis of reports of the previous month's deliveries from each farmer. In addition, from 1967 until the Comprehensive Plan was signed by each province (signatures were made between 1970 and 1974) both "in-quota" and "over-quota" levies had to be deducted from this monthly payment. The Commission made all these detailed rules and with the assistance of the staff of the Agricultural Stabilization Board, the data processing facilities of Agriculture Canada, and the cheque-issuing facilities of the Department of Supply and Services carried out the work.

Offer-to-Purchase

4.3 The offer-to-purchase program applies to butter and skim milk powder. The Agricultural Stabilization Board had purchased dry skim milk from its initial establishment in 1958. On April 25, 1966, for example, the Agricultural Products Board, which can be employed to support the A.S.B., was authorized to purchase up to 100 million lbs of spray process dry

skim milk at a price not exceeding 18 cents a lb., and on May 26, 1966 to purchase 25 million lbs of roller dry skim milk at a price not exceeding 17 cents a lb. (In fact, there is no record of any purchases of "roller" dried skim milk.) The Canadian Dairy Commission took over from the A.S.B. on April 1, 1967, and as long as the skim milk powder met the Commission's specifications, the Commission purchased it at the announced support price. (These prices are shown later under "Marketing".)

Mechanics of Tendering Skim Milk Powder to Commission:

4.4 The procedures may be broken into two parts:

- i) for the processors
- ii) for the Canadian Dairy Commission

The processor wishing to tender Canada First Grade skim milk powder to the Canadian Dairy Commission must comply with all regulations and specifications as set out by:

- i) Agriculture Canada — grade standards for Canada First Grade skim milk powder
- ii) Offer-to-Purchase Specifications of the Canadian Dairy Commission. (These specifications are readily available if required.)

The C.D.C. specifications call for stricter standards than do those of Agriculture Canada for Canada First Grade skim milk powder.

The basic steps to be followed by the processor are:

- i) to decide upon the quantity of skim milk powder to be prepared for tender to the C.D.C.
- ii) to process the milk, manufacture and package the skim milk powder in accordance with Regulations and C.D.C. specifications
- iii) to follow approved sampling procedures in order to obtain individual and composite samples representative of the complete production run for that particular lot for tender. (Copies of approved sampling procedures and methods of analysis are available)
- iv) to submit samples for grading and analysis by an approved laboratory to obtain chemical, micro-biological and physical analyses, including testing for Direct Microscopic Clump Count (D.M.C.C.), freedom from Salmonella, and to determine the Whey Protein Nitrogen (WPN) content. The work of grading may be done by the Plant Products Laboratory in Ottawa or in plant laboratories certified by Agriculture Canada under Dairy Plant Laboratory Analysis (D.P.L.A.P.) and accordingly authorized to do this work, either for their own production, or on a contractual basis for a competitive industrial milk processor.
- v) when a certified plant laboratory does the grading work, a duplicate set of samples must be forwarded to the Plant Products Laboratory

in order that analysis checks may be completed and routine surveillance maintained on the performance of the laboratory located at processing plant level

- vi) upon completion of the plant laboratory analysis, and if the product is found to be tenderable to the C.D.C., then the results must be transmitted in approved form (normally by telex in recent years) to Agriculture Canada for issuance of Canada First Grade grading certificate. This step normally follows 5-7 days after the milk is processed and the powder is manufactured. Agriculture Canada completes the grade certificate, sending 1 copy directly to the Canadian Dairy Commission, and sending 4 copies through to the processing plant.
- vii) on the processor's receipt of grading certificate, or notification that the certificates have been issued, the processor must contact the C.D.C., usually by telephone or by telex. The processor offers the tender lot to the C.D.C., requests a C.D.C. lot number and warehouse shipping instructions.
- viii) The C.D.C. advises the warehouse of the incoming shipment. The processor ships the product to the designated warehouse, and arranges for weighing and issuing of Official Weight Certificate.
- ix) Upon receipt of Warehouse Receipts and Official Weight Certificates the processor is then able to submit an invoice supported by the required documents to the C.D.C. for payment. This step normally follows 5-7 days after receipt of the warehouse shipping instructions from the C.D.C.
- x) payment from the C.D.C. should be received in approximately 20 days from date of invoice, or 45-55 days from date of product manufacture.

Time is important throughout the entire procedure especially to ensure maintenance of high quality product. Since 1970 the product must not be over 45 days of age on tendering to the C.D.C. (when the Commission first took over the maximum age was 60 days which was steadily reduced to 35 days but this was found to be impractical). This offer to purchase program gives the processor the chance to sell and move his product quickly and as the costs of storage and interest have risen, in recent years especially with interest over 1% per month and tender lots valued from \$25,000 and more, this offer to purchase program gives the processor the chance to sell and move his product quickly and thus keep his accounts receivable to a minimum.

- 4.5 **Quality Control:** When these programs were first established in the 1950's the volume of skim milk powder produced each year was relatively small. In 1957 production was 120 million lbs but this had nearly tripled to 316 million lbs by 1967. Prior to 1974, all samples of skim milk powder had to be submitted to the Plant Products Laboratory in Ottawa

for official analysis. Because of the lack of grading facilities, long and unnecessary delays in getting grading results were experienced, some times as much as 65-75 days. These lengthy delays created a variety of problems, including old product, shortage of warehouse space at plant levels, mistakes and missing samples in the backlog at the central laboratory, along with serious financial constraints on the processor because of the large, heavy inventories he had to carry.

- 4.6 The solution to this problem was not found until June 1974 when a processor, working closely with Agriculture Canada and the Commission, established the first certified laboratory located in a manufacturing milk processing plant. The requirements on these laboratories are very stringent, and the plant laboratories must perform exacting work in order to retain their status of certification. They perform a valuable and useful function in expediting the grading of the skimmed milk powder and their competent and qualified personnel can maintain a comprehensive Quality Control and Quality Assurance program within the plant on its total operations. By September 1979, 10 such plant laboratories had been certified.

- 4.7 **Tendering Process by Commission:** At the start of each Dairy Year (April 1 from 1967 to 1978) the new specifications for the skim milk powder offer-to-purchase programs were sent to all processors by the Commission. Advance information (normally through the National Dairy Council) was available, including the reasons for any increased requirements in the specifications. The most notable change has been the gradual reduction in the tolerance permitted for D.M.C.C., along with some reduction in the permitted age of the powder at time of tender acceptance. While from time to time there was expected resistance to change, for the most part the processors accepted the stricter standards and co-operated fully with the Canadian Dairy Commission in working to achieve them.

- 4.8 Step one for the Commission is to set out the specifications of the offer-to-purchase program and then, literally, to wait for skim milk powder to be tendered. The first official notice of incoming product is the receipt of the Canada First Grade certificate from Agriculture Canada. Upon receipt of the grading certificate, and the tender offer from the processor by telephone or telex, the C.D.C. allots a C.D.C. lot number and provides warehouse shipping instructions to the processor. The responsibility for lining up warehouse space rests with the C.D.C., but authorized inspectors of Agriculture Canada ensure that the space meets the standards required. In this connection, more than 30 warehouses have been used for storage purposes by the Commission throughout Canada.

- 4.9 Upon receipt of the processor's invoice complete with supporting grade certificates, Warehouse Receipts and Official Weight Certificates, the Commission processes the seller's invoice for payment at the announced price in effect at that time.

Storage and Inventory control

4.10 The storage and inventory control system used by the C.D.C. in 1979 represents improvements to the system made since it was first inherited from the A.S.B. in 1967. As far as possible, the dates when major changes were implemented are noted. It properly breaks into two sections:

1. Storage Warehouses — inspection, selection, approval, monitoring on-going storage operations and housekeeping;
2. Storage Records and Inventory Reports.

4.11 **Storage Warehouses** — In the early days of the C.D.C. it was the practice, upon receipt of advice from a warehouse offering space for storage of product, for the C.D.C. to request the Dairy Products Division of Agriculture Canada to inspect the facilities and make recommendations. Upon receipt of the inspection report, the C.D.C. approved or rejected the storage facility, having given consideration to the quality of facilities, its accessibility, availability of transportation, geographic location, the storage needs, the cost, etc. In order to obtain more uniformity in the reporting by Agriculture Canada inspectors, a standardized form was produced during 1968. In addition, the Commission issued, in 1968, a set of terms and conditions for storage facilities which covered both independent warehouses and storage attached to manufacturing plants. A more elaborate description of guidelines for the inspection of warehouses where dairy products are stored was produced during 1974 through the joint efforts of the Dairy Products Division of Agriculture Canada and the C.D.C., as an integral part of the development of an overall Quality Assurance program. (A note to file by H.J. Mestern, General Manager of the C.D.C. from September 1973, dated December 20, 1974, sets out the purpose and targets of the Quality Assurance Group.)

In 1976 a new Report on Storage Conditions was developed for completion by Agriculture Canada inspectors. The frequency of inspections may vary. Normally inspections would be at least monthly, but

Table 5: Number of Warehouses Used by C.D.C.,
by Province,
1974-1977 (as of August 31)

	1974	1975	1976	1977
	numbers			
Quebec	12	11	20	16
Ontario	5	6	3	3
Manitoba	1	2	1	1
Saskatchewan	—	1	1	2
Alberta	—	1	3	3
British Columbia	—	1	—	—
Maritimes	—	1	2	2
TOTAL:	18	23	30	27
TOTAL BAGS STORED:	1,252,000	2,663,000	2,628,000	1,507,000

more frequently if problems were evident and corrections necessary. The distribution of copies of this 5-part form facilitated improved control, viz. warehouse, C.D.C., Regional Quality Co-Ordinator, Inspector in charge, and file. Following a complete review of the systems employed in 1978, all C.D.C. contracts (including warehousing) and tenders take the form of a legal contract authorized by a resident lawyer, and supervised by the Inventory Control Manager. Table 8 shows by provinces, the number of warehouse locations in use between 1974 and 1977.

4.12 Storage Records and Inventory Reports

Prior to 1974 and the development of the Quality Assurance program described above, the inventory procedure was followed:

- i) the product was purchased on Canada First Grade Certificates issued by the Dairy Products Division of Agriculture Canada;
- ii) the product was stored in warehouses inspected by the Dairy Products Division;
- iii) storages were periodically inspected by the Dairy Products Division, reporting acute problems to the C.D.C.;
- iv) the policy of the C.D.C. was that of "a heavy hand" and a black list of unsatisfactory performances by both warehouses and/or processors was maintained;
- v) book inventories were kept and any shortages of product were charged back to the warehouses when the stocks were cleared out of that location;
- vi) each warehouse was required to report directly to the C.D.C.'s auditors the quantity of product held in storage for the C.D.C. as of March 31 each year.

4.13 There are strong indications that the pressures of product and customer complaints demanded action when in 1974-75 the Director of the Dairy Products Division (Mr. K. Savage) developed the Quality Assurance Programs. The need for improved inventory controls at that time is evidenced by the setting up by the C.D.C. of an inventory audit system, completing a physical audit of each storage at least annually, and more frequently if circumstances required. To attain this, the job of Warehouse Inventory Manager was established late in 1974.

Control of Book Inventory

4.14 At the start of each dairy year, the C.D.C. established the lot number series, to be issued in consecutive order to the plants tendering for the sale of skim milk powder to the C.D.C. A Purchase Journal maintained the details of each purchase, including storage location. Warehouse inventory cards, made out for each lot number, stored in each warehouse, provided the information for the Monthly Book Inventory. On April 1, 1979 the program was computerized, eliminating the manual system which had been maintained

from the outset without much change. Between 1967 and 1977 no record was maintained in the inventory section of either D.M.C.C. or WPN analyses. Commencing in 1978, D.M.C.C. was recorded, but even then a physical examination of each warehouse inventory card would be required to search out location of product meeting special requirements.

Marketing

4.15 The Canadian demand for butterfat at the prices set each year, according to the policy decisions, has exceeded that for the rest of the milk content, i.e., solids-not-fat, and this surplus has been turned into skim milk powder. In the 1950's, the volume of skim milk powder was not large, world prices were not high, and Canadian processors could sell their powder either in Canada or for export without too much difficulty. As explained earlier, the Agricultural Stabilization Board began to provide some price support for skim milk powder by arranging for the Agricultural Products Board to buy a given volume and sell it for export at a lower price. But over the years the volume of skim milk powder has increased as fewer farmers delivered cream to the factories and more and more delivered whole milk. Beginning in 1967, an "offer-to-purchase" system was introduced for all skim milk powder meeting the declared specifications.

4.16 The highest returns for skim milk powder are obtained where it is marketed for human consumption in Canada. Such powder is marketed to consumers, mainly in instantized form, and is used in the home as an alternative to liquid milk or evaporated milk, but direct consumption in this form is low. There is also domestic market usage for human food uses in combination with other foods (ice cream, baking instant breakfasts, chocolate crumb etc.) and for institutional use. Lower quality skim milk powder has traditionally been marketed domestically for animal feed use.

Especially during the period 1964-70, production of skim milk powder increased while domestic usage did not — indeed some traditional markets (e.g. enriched bread) were lost to competing products. As a consequence, first the A.S.B. and then the C.D.C. were forced to seek export markets for the quantities of skim milk powder that were acquired under the offer to purchase program and could not be sold into the domestic market.

4.17 World markets for skim milk powder already existed but were well-supplied by New Zealand, Australia and the major European exporting countries (now the E.E.C.). Furthermore, such markets have brought widely fluctuating returns, sometimes at or below New Zealand costs of production as a consequence of export subsidization from the E.E.C. and the limited ability of the importing countries to find foreign exchange for such imports because they were mostly relatively poor developing third world countries. (New Zealand is able to produce milk and skim milk powder at about the lowest cost in the world). From time to time exports of skim milk powder for animal feed have been made in order to eliminated excess inventories which have been over-hanging the world market;

such sales have to be at prices competitive with other protein sources and have been very low. Finally, the donation of skim milk powder as aid to the Developing Countries through, first the Department of External Affairs and, then the Canadian International Development Agency has become a regular feature of Canada's Food Aid commitment through World Food Program and bilaterally. The Canadian International Development Agency purchased its requirements from the C.D.C. at the C.D.C. support price but since 1975 has purchased at the world price.

4.18 Canada has been and remains one of the world's major exporters of milk powder, following New Zealand, the European Economic Community and Australia. Other exporting countries include Argentina, Poland, U.S.A., Sweden and Switzerland. The result for the large supplies exported by these countries and relatively scarce markets have led to very low and fluctuating world prices. Many countries had added large export subsidies to assist their exports and avoid large stocks. It was this situation that the Commission inherited from the A.S.B. in 1967. Initially the Commission would pay a subsidy to an exporter on evidence that the powder had been exported. In other words, the trader would buy the powder at the Canadian Support Price then export it, or at least sell it for export, and then submit the shipping papers as evidence of the sale for export in order to receive the export subsidy. Similarly, a processor would sell his own production for export and submit the shipping papers in order to claim the export subsidy. After a year of operations, the Commission then allowed purchases from its own stocks at 2 cents a lb. above the export price and eventually at the price at which the powder was to be exported.

4.19 The concern of the Commission was that export subsidies were given for genuine exports and not for sales that could re-enter the domestic market. Hence the desire to have evidence of exports before payment of subsidies. Nevertheless, this procedure meant that export traders and processors who exported had to carry large costs (mostly interest on borrowed money) between the time they acquired the powder and the Commission remitted the export subsidy. It soon became clear that the Commission would have to facilitate exports if it was to avoid a rapid build up of stocks which would involve large storage costs, and loss of value to stored product. Under ideal storage conditions skim milk powder will be good for up to two years with no loss of colour or texture or nutritive value. Vitamin deterioration may occur if any has been added. The requirement for fresh powder from the processor of the C.D.C. is mainly because the product may undergo long periods of transport and storage by the purchaser under less ideal conditions than in Canada before final consumption. If it should deteriorate in colour and texture, it can then only be sold for animal feed at about one-half the price if for human food consumption. Thus one objective of the Commission has been to keep stocks to a minimum.

However, the larger the export subsidy required to make sales for export, the less money available to farmers who have to pay "holdback" or "in-quota"

levies to meet these subsidies. So an almost opposite Commission objective is to keep the subsidy as low as possible.

4.20 World prices for skim milk powder were so low in the 1960's that many countries wanted them raised. After protracted negotiations within the membership of the General Agreement for Tariffs and Trade, the leading exporters signed an agreement to keep prices for powder for human consumption above 20 cents a lb. The agreement is felt to serve a useful purpose in providing a minimum level for human food world market sales. Both the minimum price in the agree-

ment and the actual world market price have moved up from the 1970 level.

4.21 It is very difficult to obtain a statistical series of prices of skim milk powder exported from Canada but an approximate idea may be found by calculating the annual price from the quantity and value of annual exports as shown by Statistics Canada. In Table 6 these calculations are shown in comparison with the announced support price for skim milk powder. An estimate of the export subsidy can be made by subtracting the export price from the support price.

Table 6: Canadian Support Prices, Average Export Prices and Average Export Subsidies Dried Skim Milk Powder 1962-1978

	Annual Support Price (Apr/Mar)	Average Export Price cents per lb.	Estimated Average Annual Subsidy
1962	a)	8	
1963	a)	9	
1964	a)	13½	
1965	a)	15	
1966	a)	15½	
1967	20	16½	3½
1968	20	9¼	10¾
1969	20	7½	12½
1970	20	10	10
1971	24 ^{b)} :26 ^{c)}	16¾	7¼:9¼
1972	29	27	2
1973	35:38 ^{d)}	29	6:9
1974	50:54 ^{d)}	43	7:11
1975	59 ^{e)} :64	36	23:28
1976	68	20¾ ^{f)}	47¼
1977	70	19	51
1978	72	21	51

a) no announced price b) as of Feb. 8 c) as of Aug. 16 d) as of Aug. 1 e) as of Jan. 24 f) C.D.C. suggests this figure is too high

Source: Annual Support Price: Annual Federal Government Announcements

Average Export Price: Calculated from Statistics Canada quantity and value trade statistics

Estimated Average Annual Subsidy: the difference between the above two columns

4.22 In order to fit together the desire to sell skim milk powder for export using an export subsidy but not to put this subsidy too low, the Commission has always had a marketing officer whose role was to keep in very close touch with the international market and to advise the Commissioners and especially the Chairman on the appropriate level of subsidy. This has been done through regular contact with the officials and marketing board staff of other exporting countries, with importing countries and Canadian and other traders.

4.23 Determination of international market prices is an important requirement of the job of international marketing. The practice to two of the major exporting countries have important influences on the price mechanism. The practice of the European Economic Community in setting an international price for milk powder for export, similar to our domestic support price, along with publishing the level of export subsidy (called "restitution") provides a good indication of the

export selling price of the E.E.C. New Zealand provides another pricing guide through their annual and semi-annual contract and pricing reviews with their "Evergreen" contract customers. There are apparently seven or eight large international customers who rely substantially on New Zealand for their requirements and as a total group account for about 20% of the world trade. While the contract prices are not published, by one means or another the information becomes available and serves as a strong indicator of New Zealand's market analyses and forecasts. A third source for market information comes from public tenders and general trade information. Analysis of all this information is complicated by various credit terms, detailed specifications, delivery schedules, length of contracts, rebates or other special arrangements employed or offered by the exporter.

4.24 Given this complex information gathering process, from a market that is not making daily sales and where there are no daily, weekly or monthly quota-

tions, even privately amongst traders, let alone published, the Commission staff had to take a position on price on a continuous basis — both current price levels and future trends up to 18 months ahead. This position of the Commission on world and particular market prices provided the basis for the decision on the level of export price for the powder the Commission had in stock, allowing a lower price for the older powder as animal feed and small differentials in price for larger volumes. At first the only price indicator was the market but then the GATT Agreement provided a minimum level for powder for human consumption (powder for animal feed could be sold at less than the agreed minimum). With the existence of this export subsidy, Canadian trading firms made offers to foreign countries and/or buyers and confirmed supplies and price with the Commission. Traders would, in fact, try to press the Commission to increase the export subsidy and thus put the traders in a more competitive (and/or profitable) position.

- 4.25 Within this process of price determination (current and forecast) and export subsidy setting, no evidence has been found of any basic principles or rules that were followed in export subsidy setting. Nor has any evidence been found of a short and long term marketing strategy which would propose markets in which to sell current year stocks and purchases and in the longer term, future markets that might be explored and developed and the price strategy that would be needed to capture them. However, within the context of price, it is important to consider that Canada is a small producer of skim milk powder in relation to the E.E.C. As a result, it is the E.E.C. and to some extent New Zealand which assert the fundamental influence on world market prices. (See attached table of inventories of Canada and the E.E.C.) The E.E.C.'s announcements from time to time of the levels of restitution set the world price level. Canada cannot be, and is not a price setter but a price follower in normal circumstances because, as a whole, our small volume has no significant impact on the world market. As such Canada's pricing policy options are very limited; given that situation, the Canadian Dairy Commission marketing strategy has been to sell at best possible prices. Largely due to transport cost considerations, the C.D.C. considers South America, Central America and the Caribbean as its 3 main

natural markets for human grade skim milk powder. (Sales outside these markets in 1976 to 1978 were either sales to recombining plants resulting from our relations with Australia which need Canada's quality of powder for recombining or were animal feed sales which are NOT markets the C.D.C. wants to develop because of the very low prices.)

- 4.26 Since about 1976 a more systematic approach has been taken. The Commission export price is more generally known within the trade, and within the Commission longer term plans are made about export targets. Some of the difficulties in planning ahead for expansion of exports is shown by the annual purchases, sales and year-end stocks of skim milk powder of the C.D.C. (Table 7). This shows that purchases fluctuated in line with farm milk production, fluctuations which may have been due to a loose quota administration or an inadequate price incentive for farmers. But it also shows that the volume of exports went through a series of peaks and troughs that do not seem to be related closely with purchases and stock changes. In that large stocks involve heavy inventory carrying charges and loans from the Department of Finance, good management would indicate minimizing year-end carryover stocks. However, the data in the Tables should also be matched with purchases and sales of butter. In 1973/74 and 1974/75, imports of butter had to be made, as much as 50 million pounds in 1974/75, which if produced in Canada would have meant at least another 100 million pounds of its by-product skim milk powder being tendered and purchased by the C.D.C. for resale on export markets. The period of 1973/74 was one of trying to stimulate production, not planning for possible expansion. At that time close-by markets, including the U.S.A., were easily available and absorbed all our skim milk powder available for export.

- 4.27 The period of shortages must be related to the very sudden 1975/76 surplus, an overnight surplus, which also occurred in the E.E.C. and other major dairy countries. With such a world-wide glut, marketing strategies for everyone aimed at maximizing the volume of export sales, including world market sales for animal feed. The failure, if any, was in underestimating the production potential, domestically and worldwide, and selling quickly enough. Further, the world market is not a gentleman's market, agreements are not necessarily kept and one must recognize that. However, prices plummeted from 45 cents in March in 1975 down to 16 cents a pound until prices reached the previously agreed GATT minimum price and prevented a further drop. On the way down there were no significant buyers until the price hit rock bottom. By the time countries could accurately reassess the situation and communicate among sellers for a more rational price level, it was all over, the surplus was there and it was a buyer's market.

- 4.28 Domestic industrial milk production was not stable prior to 1976. Production stability became the first goal and the fundamental aspect of the overall marketing strategy to minimize losses on skim milk powder exports. Once M.S.Q. was brought in line with Canadian requirements and, via the over-quota

Table 7:
SKIM MILK POWDER STOCKS

1977	E.E.C. (million lbs.)	CANADA
APRIL	1,031	90
MAY	1,073	93
JUNE	1,031	93
JULY	1,250	95
AUGUST	1,255	83
SEPTEMBER	1,240	83
OCTOBER	1,236	82
NOVEMBER	1,127	69
DECEMBER	1,096	65

Source: The Canadian Dairy Commission

levy, farmers received world market prices for their surplus products, milk production stability became a reality as evidenced by the excellent control in dairy years 1976/77, 1977/78 and 1978/79.

Table 8: Skim Milk Powder Purchases, Sales and Year End Stocks by Canadian Dairy Commission 1967-78

	<u>Purchases</u>	<u>Sales</u> millions lbs.	<u>Year end</u> <u>Stocks</u> <u>March 31</u>
1967-68	n.a.	n.a.	n.a.
1968-69	198	123	172
1969-70	171	272	69
1970-71	116	180	5
1971-72	104	109	—
1972-73	206	143	63
1973-74	112	161	15
1974-75	172	99	89
1975-76	328	134	282
1976-77	228	326	194
1977-78	247	381	61

n.a.: not available as of 12 October 1979

Source: Canadian Dairy Commission

4.29 The marketing strategy, since 1977, has been clear cut:

1. to clear previous inventories of surplus skim milk powder, if necessary by selling them as feed.
2. protect Canadian human grade powder markets (by GATT negotiations and pricing structures designed to keep those markets, even at some cost, etc.)
3. to diversify as quickly as possible into dairy products other than skim milk powder which give better returns. The evidence of a marketing strategy has been the identification of natural markets and the process of protecting them. For a year and a half the Canadian Govern-

ment has been negotiating for an international dairy arrangement under the GATT with respect to milk powders and has concurred that Canada should not participate in the milk powder protocol unless Canada's commercial interests in its natural markets of Mexico and Caribbean rim countries are fully protected. Perhaps to the dismay of some traders, C.D.C. has identified and pursued its major and stable markets where it feels long term benefits are higher.

Since 1977, this strategy has resulted in (i) the 1975/76 surplus stocks being cleared out, (ii) programs such as the Butterfat Exchange Program, and the product diversification to such products as whole milk powder and evaporated milk are in the place and returning higher value for the surplus solids which result from supplying domestic butterfat requirements, and (iii) the expansion in M.S.Q. of 3 million hundredweights of milk for products for export in 1979.

4.30 Statistics on Production, Domestic Use and Exports

Statistics Canada information on skim milk powder from 1959-1977 provides details of the above events. The following table 9 shows stocks, production, domestic disappearance and exports. Production has increased from 176 million lbs in 1959 to 346 million lbs in 1976. Domestic disappearance (where the data may not be quite accurate) fluctuates between 100 and 130 million lbs while exports have steadily risen from 48 million lbs in 1960 to a peak of 367 million lbs in 1977. Throughout this period, year-end stocks were very variable from 22 million lbs on January 1, 1960 to 329 million on January 1, 1976, with peaks and lows in between.

- 4.31 Exports have gone to many different destinations throughout the world but a few countries have grown to be consistently large buyers. Table 10 shows the seven largest destinations of powder in each year from 1962-1978. Cuba was consistently a large buyer until 1976 but beginning in 1969, Mexico has been the largest buyer. Beginning with smaller purchases in 1976, the Philippines moved into third place in 1977 and 1978.**

Table 9—Skim Milk Powder—Production, Utilization, Stocks 1959-77

<u>Year</u>	<u>Stocks Jan. 1</u>	<u>Production</u>	<u>Total Supplies</u> million pounds	<u>Exports</u>	<u>Domestic Disappear- ance</u> (a)	<u>Stocks Dec. 31</u>
1959	77.3	176.4	253.8	110.5	121.3	21.9
1960	21.9	172.0	193.9	48.0	122.7	23.2
1961	23.2	213.0	236.2	53.1	153.3	29.9
1962	29.9	192.3	222.2	35.7	133.0	53.5
1963	53.5	176.1	229.6	55.6	153.0	21.0
1964	21.0	203.0	224.0	42.1	153.4	28.5
1965	28.5	222.2	250.7	86.3	138.9	25.5
1966	25.5	263.5	289.0	69.4	163.6	55.9
1967	55.9	316.1	372.1	95.0	139.6	137.5
1968	137.5	360.4	497.9	127.1	161.8	209.0
1969	209.0	395.1	604.1	238.3	212.2	153.6
1970	153.6	362.4	516.0	297.2	133.0	85.9
1971	85.9	301.1	389.0	248.5	100.8	37.6
1972	37.6	343.2	380.9	126.2	91.7	163.0
1973	163.0	309.7	472.7	268.7	113.6	90.5
1974	90.5	302.5	393.0	129.3	127.4	136.3
1975	136.3	411.3	547.6	104.2	114.1	329.4
1976	329.4	350.4	679.8	216.6	143.4	319.8
1977	319.8	346.4	666.3	367.1	175.3	123.9

Source: Statistics Canada Dairy Statistics, Catalogue No. 23-201

(a) CDC reports that "because of the lag in Statistics Canada reporting a more accurate range of domestic disappearance is 100-130-million lbs. and not 100-200 million lbs. that that this column might suggest.

Table 10—Skim Milk Powder—(1962-1977) Quantity and Value

<u>Year</u>	<u>Name of Country</u>	<u>Quantity (100 lbs.)</u>	<u>Value (\$)</u>
<u>1962</u>	Cuba	108,810	784,881
	Italy	73,045	463,104
	Venezuela	26,079	229,251
	Jamaica	20,773	186,032
	Hong Kong	9,387	144,431
	Switzerland	21,898	142,219
	Trinidad	17,043	132,807
* Total		356,888	2,864,659
<u>1963</u>	Cuba	116,277	928,944
	Netherlands	82,481	713,072
	Denmark	49,907	390,968
	Spain	35,687	341,973
	Italy	26,198	292,950
	Trinidad	26,796	273,048
	Venezuela	25,087	238,568
* Total		555,564	5,178,992
<u>1964</u>	Cuba	177,328	2,434,171
	Italy	65,410	944,609
	Venezuela	38,098	520,923
	Netherlands	27,123	369,227
	Jamaica	21,120	312,709
	Trinidad	18,112	226,961
	Yugoslavia	13,228	146,490
* Total		421,388	5,735,960

<u>Year</u>	<u>Name of Country</u>	<u>Quantity (cwts)</u>	<u>Value (\$)</u>
<u>1965</u>	Netherlands	298,555	4,351,616
	Cuba	253,766	3,865,419
	Italy	106,808	1,574,597
	Venezuela	71,018	1,074,393
	Rep. of South Africa	26,432	446,278
	United Kingdom	17,459	264,943
	Jamaica	17,254	272,387
* <u>Total</u>		<u>862,583</u>	<u>12,916,768</u>
<u>1968</u>	Japan	281,928	4,371,000
	Netherlands	96,679	1,384,000
	Italy	65,882	1,071,000
	Venezuela	48,284	778,000
	Cuba	44,092	671,000
	India	38,358	471,000
	Jamaica	16,763	299,000
* <u>Total</u>		<u>694,472</u>	<u>10,742,000</u>
<u>1967</u>	India	223,721	3,595,000
	Netherlands	184,012	3,051,000
	Cuba	106,440	1,673,000
	Italy	87,636	1,479,000
	Venezuela	69,043	1,103,000
	Japan	69,236	1,054,000
	Mexico	57,534	934,000
* <u>Total</u>		<u>949,727</u>	<u>15,539,000</u>
<u>1968</u>	Cuba	331,341	2,209,000
	Belgium-Luxemburg	213,883	1,225,000
	Denmark	82,396	1,142,000
	Italy	123,289	1,105,000
	Venezuela	67,775	935,000
	Jamaica	51,957	738,000
	Netherlands	60,665	650,000
* <u>Total</u>		<u>1,266,882</u>	<u>11,747,000</u>
<u>1969</u>	Mexico	495,640	4,154,000
	Cuba	577,653	3,735,000
	Venezuela	90,930	1,359,000
	Belgium-Luxemburg	256,585	1,358,000
	Spain	185,053	1,238,000
	Japan	103,156	574,000
	Jamaica	48,973	551,000
* <u>Total</u>		<u>2,383,009</u>	<u>17,606,000</u>
<u>1970</u>	Mexico	696,126	9,711,000
	Cuba	619,162	4,730,000
	Spain	413,186	2,867,000
	Sweden	171,729	1,742,000
	Venezuela	121,636	1,396,000
	Indonesia	139,194	1,210,000
	Chile	71,607	752,000
* <u>Total</u>		<u>2,971,535</u>	<u>29,095,000</u>
<u>1971</u>	Mexico	520,314	11,151,000
	Cuba	598,676	10,645,000
	Sweden	207,235	3,674,000
	Spain	209,973	2,155,000
	India	135,741	1,848,000
	Venezuela	82,634	1,736,000
	Belgium-Luxemburg	145,177	1,717,000
* <u>Total</u>		<u>2,403,960</u>	<u>40,387,000</u>
<u>1972</u>	Mexico	441,788	11,669,000
	Cuba	195,125	5,814,000
	India	154,780	4,008,000
	Venezuela	70,489	2,049,000
	Japan	68,057	1,934,000

<u>Year</u>	<u>Name of Country</u>	<u>Quantity (cwts)</u>	<u>Value (\$)</u>
	Columbia	36,776	1,010,000
	Viet Nam	20,525	651,000
* <u>Total</u>		<u>1,145,065</u>	<u>30,888,000</u>
<u>1973</u>	United States	800,455	28,082,000
	Cuba	709,072	19,130,000
	Mexico	484,963	12,692,000
	Venezuela	121,572	3,367,000
	India	101,997	2,761,000
	Brazil	53,089	1,317,000
	Columbia	47,600	1,299,000
* <u>Total</u>		<u>2,676,327</u>	<u>77,854,000</u>
<u>1974</u>	Mexico	613,310	24,988,000
	Cuba	251,171	11,021,000
	United States	225,063	10,528,000
	India	48,523	2,065,000
	Venezuela	39,414	1,857,000
	Uruguay	25,309	1,155,000
	Pakistan	17,748	728,000
* <u>Total</u>		<u>1,291,728</u>	<u>55,358,000</u>
<u>1975</u>	Mexico	257,438	11,326,000
	Cuba	256,849	7,692,000
	Brazil	67,460	1,653,000
	Senegal	33,712	1,553,000
	Venezuela	25,568	935,000
	Honduras	17,663	700,000
	Japan	22,222	500,000
* <u>Total</u>		<u>801,633</u>	<u>28,865,000</u>
<u>1976</u>	Mexico	507,906	10,417,000
	Spain	343,491	7,713,000
	Cuba	236,147	5,420,000
	Bulgaria	310,629	5,086,000
	Japan	192,037	2,644,000
	Algeria	66,439	2,302,000
	Brazil	84,547	1,728,000
* <u>Total</u>		<u>2,164,160</u>	<u>44,798,000</u>
<u>1977</u>	Mexico	915,384	18,317,000
	Japan	483,097	7,345,000
	Philippines	300,443	5,949,000
	Spain	197,170	3,983,000
	Taiwan	216,217	3,958,000
	Thailand	130,828	2,610,000
	Chile	117,244	2,354,000
* <u>Total</u>		<u>3,670,631</u>	<u>69,775,000</u>

*Total includes exports to all destinations.

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APPENDIX 16

STATEMENT OF EVIDENCE OF MICHEL CHOQUETTE

1. In February 1974 I met Mr. David Schafer and his son, Mr. George Schafer, chairman and president, respectively, of Schafer Bros. Ltd., who both told me of their grievances against the Canadian Dairy Commission with respect to the exportation of Canadian skim milk powder.
2. The Schafers told me that they believed they had been treated unfairly by the Canadian Dairy Commission on more than one occasion, that they had lost potential business as a result of what they felt was unfair intervention on the part of this government organization, and that they believed they were entitled to financial compensation for these losses.
3. The Schafers told me that they did not particularly wish to sue the Government of Canada, even though they believed they might have legal grounds to do so, and that they were inclined to look at the matter more as a moral question than a legal one, hoping that a sense of fair play would prevail and an amicable settlement could be reached.
4. The Schafers informed me that although they had often approached the Canadian Dairy Commission itself to discuss compensation, the Dairy Commission had flatly refused to consider the matter.
5. The Schafers told me, moreover, that they and Mr. David Schafer's Member of Parliament, the Hon. Warren Allmand, had attempted to have Schafer Bros.' grievances examined in depth by three successive Ministers of Agriculture, that by its own admission the Department of Agriculture had, in each of these cases,

relied on what present or past officials of the Canadian Dairy Commission had had to say about the said grievances, and that this route had brought them no closer to the relief which they sought.

6. After having examined Schafer Bros.' grievances in a preliminary fashion, I came to the conclusion that they were sufficiently serious to warrant a fair and impartial hearing by a body other than the Canadian Dairy Commission.
7. Since there was no federal ombudsman in Canada, I decided to take the matter to the Prime Minister, the Rt. Hon. Pierre Elliott Trudeau, and to provide him as well as the Hon. Warren Allmand and the then Minister of Agriculture, the Hon. Eugene Whelan, with whatever material I could prepare or assemble to assist these gentlemen in arriving at a proper assessment of Schafer Bros.' grievances.
8. To this end I wrote what I chose to call Résumé A, primarily a historical account of Schafer Bros.' negotiations with and sales to the governments of Cuba and Mexico and of the company's dealings in this respect with the Canadian Dairy Commission and its predecessor, the Agricultural Stabilization Board. (Résumé A has been filed with the Commission of Inquiry).
9. Included as part of Résumé A are introductory notes which I prepared to provide general information about skim milk powder: methods of drying, packing, storing; heat treatment (low, medium and high heat); whey protein nitrogen analyses; direct microscopic clump (DMC) count; Canadian government purchasing regulations, testing and grading; government warehousing and lot registration numbers; government export subsidies for the private trade; the growing surplus situation; the Canadian Dairy Commission Act; terms and abbreviations commonly used in the export trade; etc.
10. In writing Résumé A, I based myself upon the following sources of information:
 - a) many detailed discussions with the Schafers.
 - b) several discussions with Mr. Gilles Choquette (no relation), then Executive Assistant to the Minister of Agriculture, the Hon. Eugene Whelan.
 - c) a large quantity of letters, telexes and telegrams received or sent by Schafer Bros. Ltd.
 - d) other documents in the possession of Schafer Bros. Ltd.
 - e) material I obtained from Statistics Canada, the library at Agriculture Canada, Information Canada, the Queen's Printer, the American Dry Milk Institute, the American Public Health Association, FAO, the Canadian Embassy in Mexico City, the Mexican government, etc.
 - f) written answers to certain questions obtained for me from the Canadian Dairy Commission by Mr. Gilles Choquette, then Executive Assistant to Mr. Whelan.

- g) signed statements by certain Mexican officials and individuals.
11. Photocopies of all sources of information referred to under c), d), e), f) and g) above were assembled as the three folders of justificatory documents accompanying Résumé A: 1951-1968; 1969-1970; and 1971-1976. (These three folders of documents have been filed with the Commission of Inquiry).
 12. In December 1975, while I was still completing Résumé A and its documentation, I became aware of certain events taking place concerning a possible sale of milk powder to the Philippines by Schafer Bros. Ltd. and the company's dealings in this respect with the Canadian Dairy Commission. Given that these events seemed to suggest problems similar to those which the Schafers appeared to have experienced in the past with the Canadian Dairy Commission, I decided to document these events as they happened, in a series of memos to Mr. Gilles Choquette, then Executive Assistant to the Minister of Agriculture, the Hon. Eugene Whelan.
 13. In writing these memos, I based myself upon the following sources of information:
 - a) detailed discussions with the Schafers.
 - b) conversations with Mr. Gilles Choquette.
 - c) letters and telexes received or sent by Schafer Bros. Ltd.
 - d) other documents in the possession of Schafer Bros. Ltd.
 14. These memos, along with relevant documents referred to under c) and d) above, were submitted successively to Mr. Gilles Choquette from December 1975 to September 1976, and later all this material was assembled as Résumé C (which has been filed with the Commission of Inquiry).
 15. When I completed Résumé A, which is dated November 12, 1976, I submitted copies of this résumé and its three accompanying folders to the Prime Minister, the Rt. Hon. Pierre Elliott Trudeau, to the Hon. Warren Allmand, and to Mr. Gilles Choquette, who had just been appointed Chairman of the Canadian Dairy Commission.
 16. At the same time I also submitted to each of these gentlemen a bound copy of my memos to Mr. Gilles Choquette and related documents concerning the possible sale to the Philippines, which bound copy was also dated November 12, 1976 and was, as mentioned above, labelled Résumé C. (I chose to call this material Résumé C for the simple reason that at this time I envisaged submitting another brief called Résumé B. I later decided that Résumé B was not sufficiently relevant to Schafer Bros.' grievances against the Canadian Dairy Commission, and therefore did not submit it.)
 17. Both Résumé A and Résumé C were prepared and documented by myself, and together constitute what I consider to be a fair representation of the position of Schafer Bros. Ltd. with respect to the company's efforts to open up new markets for Canadian skim milk powder in Cuba, Mexico and the Philippines, and with respect to the company's dealings with various officials of the Agricultural Stabilization Board or of the Canadian Dairy Commission in the process.
 18. In 1975, as I was in the process of preparing Résumé A, I was asked by Mr. Gilles Choquette, then Executive Assistant to the Minister of Agriculture, the Hon. Eugene Whelan, to write a reply to what I felt were inaccurate arguments (concerning Schafer Bros.' grievances) already put forward by the Canadian Dairy Commission and the Department of Agriculture in various letters to the Schafers or to Mr. David Schafer's Member of Parliament, the Hon. Warren Allmand.
 19. I therefore wrote, once I had completed and submitted Résumé A and Résumé C, what I titled the Report to Mr. Gilles Choquette, a long (182 pp.) letter dealing individually with the various arguments, and definitively stating Schafer Bros.' case. (This report, which is dated July 25, 1977, has been filed with the Commission of Inquiry).
 20. In preparing this Report to Mr. Gilles Choquette, I based myself on the same sources of information I had used in the preparation of Résumé A, above described, as well as on additional documents made available to me by the Prime Ministers's Office. I attached these new documents to my Report — along with what I considered to be the most important of the documents already submitted in the folders accompanying Résumé A — as Appendices 2-78. Appendix 1 consisted of a condensed and therefore more readable version of Résumé A. (All documents which accompanied the Report to Mr. Gilles Choquette, that is to say Appendices 1-78, have been filed with the Commission of Inquiry).
 21. When I completed the Report to Mr. Gilles Choquette, I submitted copies of this report and its accompanying documentation to the Prime Minister, the Rt. Hon. Pierre Elliott Trudeau, to the Hon. Warren Allmand, and, of course, to Mr. Gilles Choquette, by then Chairman of the Canadian Dairy Commission.
 22. Shortly after this I wrote and submitted to the above-named individuals an addendum to Résumé C (Philippines), which is dated August 11, 1977. (This addendum has been filed with the Commission of Inquiry).
 23. In preparing this addendum to Résumé C, I based myself on the same sources of information I had used in preparing Résumé C, as well as on new documents made available to me by the Schafers. These documents were attached to the addendum (and have been filed with the Commission of Inquiry).
 24. I then wrote an addendum to my Report to Mr. Gilles Choquette. This addendum, which is dated August 15, 1977, and which takes the form of a memo to Miss Mary E. Macdonald, then Administrative Assistant to the Prime Minister, the Hon. Pierre Elliott Trudeau, was submitted at the time to Miss Macdonald as well as to the Prime Minister, to the Hon. Warren Allmand, and, I believe, to Mr. Gilles Choquette. (This addendum has been filed with the Commission of Inquiry).

25. In preparing this addendum I based myself on the same sources of information I had used in the preparation of Résumé A and my Report to Mr. Gilles Choquette, as well as on conversations I had had with Miss Macdonald and Mr. Gilles Choquette, on documents shown to me by Mr. Choquette, and on new documents made available to me by the Prime Minister's Office. These new documents were attached to this August 15, 1977 addendum (and have been filed with the Commission of Inquiry).
26. I then wrote a memo to the Prime Minister, the Rt. Hon. Pierre Elliott Trudeau, concerning answers which I had not been able to obtain from the Canadian Dairy Commission. This memo, which is dated August 30, 1977, was submitted at the time to the Prime Minister and to the Hon. Warren Allmand. (The memo has been filed with the Commission of Inquiry).
27. In preparing this memo, I based myself on the same sources of information I had used in the preparation of Résumé A and my Report to Mr. Gilles Choquette, including conversations with Mr. Choquette. I attached to this memo certain documents which I had already submitted with Résumé A and with the Report to Mr. Gilles Choquette. (These documents have, as stated above, been filed with the Commission of Inquiry).
28. I later wrote a memo to Mr. J.S. Milligan, a lawyer for the Department of Justice, concerning further and more recent events related to Schafer Bros.' continuing efforts to export Canadian milk powder and to the company's dealings with the Canadian Dairy Commission, considering these events to be of a similar nature to those described in some of my previous submissions. This memo, which is dated November 30, 1977, was submitted at the time to Mr. Milligan, as well as to the Prime Minister, the Rt. Hon. Pierre Elliott Trudeau, and to the Hon. Warren Allmand. (This memo has been filed with the Commission of Inquiry).
29. In preparing this memo I based myself on discussions with the Schafers, and on new documents made available to me by the Schafers. These documents were attached to this November 30, 1977 memo (and have been filed with the Commission of Inquiry).
30. I also submitted to Mr. Milligan, around this time, Schafer Bros.' suggested compensation figures (which have been filed with the Commission of Inquiry).
31. I later wrote a letter to the Prime Minister, the Rt. Hon. Pierre Elliott Trudeau, which is dated September 19, 1978. (This letter has been filed with the Commission of Inquiry).
32. Throughout the five years I prepared the above material, and in the additional year or so that has elapsed since then, I have never received any fee, salary, remuneration or other compensation, either directly or indirectly, from the Schafers of any other person, firm, corporation or organization for any of the time I have devoted to this matter. Nor is it my intention ever to claim such payment at any time in the future, even in the event the Schafers receive compensation from the Government of Canada. I have signed an affidavit to this effect dated December 13, 1977, which I submitted at the time to Mr. J.S. Milligan of the Department of Justice.
33. The Schafers have, however, reimbursed me for most of the out-of-pocket expenses — such as typing, photocopying, stationery, travel to and from Ottawa, telephone, courier service, etc. — which I have incurred on their behalf since 1974 in preparing and submitting the above-described material.
34. Moreover, in consideration of the fact that from 1974 to 1978 my work on their behalf occupied virtually all my time and deprived me of the opportunity of earning income, during this period Messrs. David and George Schafer guaranteed the repayment of a loan in the principal amount of approximately \$12,000 made to me by the Bank of Montreal, and Mr. George Schafer guaranteed the repayment of a loan in the principal amount of \$1,500 made to me by the Bank of Nova Scotia. Such guarantees are in no way arrangements intended to provide me with compensation in any form. It is not my intent that the Schafers should ever be called upon to repay these loans in my stead, my clear intent being to repay such loans myself as soon as my financial situation permits it. I have, in fact, already begun to repay these two loans to the banks in question.
35. I have never been employed in any capacity by Schafer Bros. Ltd. or personally by Mr. David Schafer or Mr. George Schafer.
36. I have never been involved with Schafer Bros. Ltd. or with Messrs. David or George Schafer personally in any business matter of any kind, nor is it my intention to do so in the future.
37. The above is of a factual, and not of an opinion nature.
38. I am prepared, if required to do so, to attend before the Commission of Inquiry, and to submit to examination and cross-examination.

MICHEL CHOQUETTE

Montreal, Quebec
January 11, 1980

